

**Julie James AS/MS**  
Y Gweinidog Newid Hinsawdd  
Minister for Climate Change



Llywodraeth Cymru  
Welsh Government

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

19 April 2023

Dear Llyr,

Thank you for your letter dated 3 March, setting out the Committee's questions on the provisional Resources and Waste Common Framework. I am responding as the Minister responsible for this policy area.

The Common Framework sets out how Welsh Government, Scottish Government, UK Government, and the Northern Ireland Executive will work collaboratively in the areas covered by waste and resource efficiency. Responses to the questions posed by the Committee are set out below.

I would like to take this opportunity to thank you for your continued work in carrying out scrutiny in relation to the Common Frameworks programme.

Yours sincerely,

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

**Julie James AS/MS**  
Y Gweinidog Newid Hinsawdd  
Minister for Climate Change

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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.



### **Provisional Common Framework for Resources and Waste**

Question 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?

In October 2017 the JMC(EN) (Joint Ministerial Committee (EU Negotiations)) agreed a set of principles to underpin the frameworks programme. The second principle states:

Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:

- be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;
- maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules;
- lead to a significant increase in decision-making powers for the devolved administrations.

The framework fully respects these principles.

Question 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?

The scope of the framework reflects the policy cycle in covering both policy development and delivery aspects. It also reflects the fact that in this area there is a longstanding practice of active engagement between all four governments on both policy creation and operational aspects. The decisions that can be taken within the framework reflect the process it outlines and includes:

- I. The noting of information with respect to the policy development and delivery in each nation, exploration of any interdependencies and opportunities to collaborate.
- II. Resolution of issues.
- III. Referring issues to the overarching dispute avoidance and resolution mechanism outlined in the appropriate intergovernmental structures.
- IV. Reviewing and amending the Framework and Concordat.

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The Common Frameworks will not change the way that we engage with the Senedd and consult with stakeholders and as such, we anticipate the framework will operate alongside the normal policy cycle as nations individually and collectively develop policy.

## Divergence

Question 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?

In this area, there are examples of policies being delivered collectively and equally longstanding examples where each nation has taken a different approach which is tailored to each nation's individual policies and needs. The starting point for this framework is a position where significant flexibility was afforded by the previous EU rules, which as a minimum should be maintained as reflected in the principles underpinning Common Frameworks.

In referring to a demonstrable impact, the Framework is emphasising the need for evidence which demonstrates the scale of the impact. The Framework then provides governance structures and consensus-based processes for both considering and managing the impact of policy changes.

In doing so, the Framework recognises that differences in policy and approach have long been a feature in this area and continue to be a feature going forward, recognising the flexibility afforded within the devolution settlements.

Question 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?

There are several policies being introduced during this Senedd term on both a Wales-specific and multi-nation or UK-wide basis, which could have a potential impact and where working within the Resources and Waste Common Framework will help to ensure those issues are considered and managed. Recent examples have included the Single Use Plastic bans and the Deposit Return Scheme.

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## New structures

Question 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?

The role of the working group is to bring together the relevant officials from the Parties to discuss the legislative and policy approaches relating to waste and resource efficiency as part of the wider approach in delivering a circular economy; and to:

Facilitate multilateral policy development and develop and agree upon common policy approaches where appropriate; manage potential divergence in a way that respects the Devolution Settlements; coordinate parliamentary and stakeholder engagement and communication; Review and amend the framework as per the Review and Amendment Mechanism; and escalate issues as per the dispute avoidance and resolution process should this be required.

Following the initial phase of monthly meetings to establish the group, the frequency of the general working group meeting has now moved to quarterly. However, the group is continuing to meet on a monthly basis to discuss the REUL Bill which is an example of how it is intended that the group will meet between the quarterly meetings where there are key issues to be discussed.

Question 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?

The purpose of the sub-groups flows from that of the Resources and Waste Working Group set out above, in bringing together relevant officials to discuss the relevant areas relating to waste and resources efficiency. The Framework governance structures are designed so that they can be utilised on a case-by-case basis as and when required, as was done in for example to discuss the Single Use Plastic bans.

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## UK Legislation

Question 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?

All four governments have reiterated their commitment to establish Common Frameworks, which are even more important in the context of the Internal Market Act and the serious threat it poses to devolution. The Intergovernmental Agreement however remains in place and must be respected and as set out above, one of the key principles underpinning the Common Frameworks is that they should maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules. The planned implementation of Deposit Return Schemes and a differing approach to Single Use Plastic having been in place prior to the UK's exit from the EU and fully acceptable within the EU's common market.

While Welsh Government has been clear that we are not opposed to the principle of an internal market for the UK, nor are we opposed to a UK-wide subsidy regime, the UK Government's UK Internal Market Act goes far beyond what is needed to ensure economic and regulatory cooperation between the nations of the UK.

Given the highly contentious nature of the Internal Market Act, and possible future litigation, we do not believe it is appropriate that framework documents should be updated to reference the exclusion process agreed upon in December 2021.

## International obligations

Question 8. Can you elaborate on the implications of the Retained EU Law Bill on the framework?

Common Frameworks demonstrate that good intergovernmental working is possible and that collaborative working and differing policy approaches can be managed through constructive dialogue and collaboration.

The mechanisms provided by the Common Framework for early engagement are being utilised during the Retained EU Law (Revocation and Reform) (REUL) Bill

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process and the IMSC has identified the relevant Common Frameworks as the right context for the development of REUL.

The REUL will have no impact on the operability of this Framework. The Resources and Waste Common Framework Working Group is however providing the space to oversee REUL analysis, with dedicated meetings having been set up to ensure the discussions occur as provided for within the Framework. While granular work needs to be carried out between counterparts at the policy level, members of the Working Group will carry out oversight together, to which Common Framework mechanisms will continue to apply.

Question 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?

The Common Framework allows the parties to ascertain the impact of international trade on the areas within its scope, where consideration of any impact will be undertaken in a way that meets the requirements of the JMC(EN) principles. In this way the Framework provides the opportunity to consider any implications stemming from international trade, which have a direct bearing on the operation of the Common Framework within the areas encompassed by its scope. The negotiations are not however subject to this process as that is outside of its intended purpose, with decision-making on reserved matters continuing to sit with the UK Government.

In areas covered by Common Frameworks and for example through involvement in negotiations with the EU under the Trade and Cooperation Agreement, Welsh Government officials engage with their counterparts in the other Governments of the UK. This includes information on relevant developments in EU law and the implications of the Northern Ireland Protocol.

## Stakeholder engagement

Question 10. Can you provide information on how stakeholders, including Natural Resources Wales, were involved in developing the framework?

A summary of the proposed Common Framework on Resources and Waste Policy was sent to key stakeholders, including Natural Resources Wales, in December

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2020. It is however anticipated that the key area of interest to stakeholders such as Natural Resources Wales is likely to be on the policies going through the framework rather than the framework itself, given the purpose of Framework is to set out how the how the governments of the UK will work together. These arrangements are therefore principally for the four governments, with the ways of working intended to continue the established approach to issues such as waste management, including the engagement of the respective regulators. No immediate changes are therefore expected for stakeholders because of the adoption of the processes within the Framework.

Question 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?

From the beginning of the frameworks programme, legislatures and stakeholders are both seen as vital contributors to the development of Common Frameworks.

The Resources and Waste Framework recognises that clear communication with stakeholders is important in the development of resources and waste legislation and policy. Processes for external stakeholder engagement are not changed by the Framework, it simply commits the parties to work together to ensure necessary stakeholder communication and consultation can take place as appropriate. Where stakeholder engagement is proposed on a UK-wide basis or to encompass more than one nation, the Framework will help arrangements to be established to jointly by supporting development and agreement to the approach.

The distinction between engagement with parliaments and stakeholders recognises the specific role parliaments have, for example in the scrutiny and development of legislation.

## Reporting and transparency

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

Since the provisional framework was agreed in 2020, the Coronavirus pandemic changes in the UK Government and resource constraints have delayed publication. However, the governments have continued to work together on policy and

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operational matters using existing arrangements and processes provided for by the provisional Framework.

The original intention was for Frameworks to be fully in place by the end of the transition period in December 2020. However, due to the prioritisation of no deal preparations and subsequently the need to prioritise the response to Covid-19, this deadline was not achievable. Therefore, the four governments agreed to initially establish common frameworks on a provisional basis and these became operational in January 2021.

In addition, while all provisional frameworks have been approved by portfolio Ministers, overall JMC/IMSC sign off has not been confirmed as NI Ministers' clearance is still pending. The NI First Minister and deputy First Minister will provide final clearance of frameworks on behalf of the NI Executive with constitutional Ministers in other governments reserving the right to provide clearance at their discretion.

Once all legislatures have had the opportunity to carry out the scrutiny of frameworks and report on their conclusions, the recommendations for each individual framework will need to be collated to consider and agree any amendments. Following which Ministers will write to their respective scrutiny committees with a response to their scrutiny recommendations and final frameworks will be published.

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

In February 2023, the Interministerial Standing Committee (IMSC) agreed the format and process for the annual reporting of frameworks. This will commence a year after the frameworks have been formally signed off and reports will be made available to committees.

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## Review and amendment of the framework

Question 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?

Work across the parties is still ongoing to agree the final process for the reviews of the Common Framework.

The period for reviews stated within the Framework reflect the proposal to have more regular reviews during the period initially after they come into effect following final approval and publication, with the frequency then lessened over time.

Question 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?

Stakeholder consultation and committee notification are inherent parts of the frameworks review process. The Welsh Government considers it essential that there is effective engagement, scrutiny and monitoring of the operation of Common Frameworks. This should include providing a process for any interested stakeholders to provide comments on the operation of the Frameworks and updates on the operation of the Common Framework, with Ministers providing evidence to Committees on the details of any update where this is requested.

Question 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?

The four legislatures of the UK have an inherent role in the review of Common Frameworks following the finalisation of each framework agreement, encompassing both the specified review periods and the annual reporting process.

Any review periods stated within the Framework will come into effect upon final implementation and publication. We will update the Committee further in this regard once the Framework is finalised.

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