



Ein cyf/Our ref: JJ/PO/220/2023

Heledd Fychan MS
Interim Chair
Climate Change, Environment, and Infrastructure Committee
Senedd Cymru
Cardiff Bay
Cardiff
CF99 1SN

26 June 2023

Dear Heledd,

Thank you for your letter of 16 May 2023 requesting further information and/or clarification on a number of matters relating to provisional Common Framework for the UK Emissions Trading Scheme (UK ETS).

Responses to the questions posed by the Committee are set out below. I would also like to highlight the unique nature of this Common Framework in that it sets out how the four Governments of the UK will work together to deliver and develop the UK ETS as a joint scheme. The Framework therefore not only considers how policy decisions will be reached and agreed, but also how the four governments will work together to maintain an effective market.

This Framework is the first iteration of a living document, which the UK ETS Authority expect to develop as both the scheme and our ways of working evolve.

Competence

How might the ongoing competence dispute between the UK and Welsh governments impact future legislation and policy decisions within the UK ETS framework?

While there are differing views on the use of the Finance Act in certain policy elements of the UK ETS, this is not currently an issue as all members of the Authority are working toward a common purpose. This was evidenced in the legislative consent granted for the Finance Bill 2020. I am clear that if, in the future, we believe decisions to be made are within the competence of the Senedd and the UK Government are required to legislate on our behalf, we will bring a Legislative Consent Motion.

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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.

Can you elaborate on the specific provisions in the framework that set out how disagreements on competence will be managed, and how the legislatures will be consulted on competence disputes?

As set out in page 38 of the Framework, where exclusive competence is disputed, the Four National Authorities shall consider this, and where appropriate seek legal advice and the view of the devolved legislatures. All attempts will be made to resolve disputes at every level of the UK ETS Authority governance structure. However, where a competency dispute cannot be resolved, it becomes a formal dispute, and shall be subject to the formal dispute resolution process. As set out above, where we believe decisions to be made are within the competence of the Senedd and the UK government are required to legislate on our behalf, we will bring a Legislative Consent Motion.

Monitoring Effectiveness

How does the Welsh Government plan to monitor and evaluate the effectiveness of the UK ETS in achieving its objectives, particularly in terms of reducing greenhouse gas emissions?

The Authority produces an annual report titled “Report on the Functioning of the UK Carbon Market” which is aimed at providing transparency on the performance of the scheme. This includes information on compliance and enforcement under the scheme. This report by providing a snapshot of the scheme’s function in the previous year, helps the Welsh Government monitor progress of the scheme.

In addition, the UK ETS Authority has committed to a two-phase study that will evaluate the effectiveness of the scheme in driving emission abatement, as well as understanding the impact it has on participants and the wider economy.

The first phase, which is due to be completed in 2023, will focus on the process of establishing the scheme and what the outcomes have been in its initial years. The second phase of the evaluation is due to be carried out between 2025-2026 and will be focussed on the impacts of the scheme within its first four years, such as understanding the effect the scheme has had on the emissions intensity of participant processes or in being attributable to carbon leakage. This phase will not just focus on what impacts have been felt because of the scheme but also how these impacts have been delivered, as well as wider spill over effects.

Are there any provisions in the UK ETS framework to address potential regional disparities in the implementation and outcomes of the scheme across the four UK nations?

There is provision within the framework under the non-legislative approaches, to ensure that the Framework fulfils the objectives agreed at the Joint Ministerial Committee in October 2017, namely, to maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as was afforded by EU rules. These considerations are taken into account both in the policy development and the implementation of the scheme, so that a level playing field is afforded across the UK.

Intergovernmental Relations Review (IGRR)

How does the UK ETS framework align with the Intergovernmental Relations Review, and how will the outcomes of the review be integrated into the framework's governance and dispute resolution processes?

The ETS Framework reflects the principles and mechanisms outlined in the Intergovernmental Relations Review (IGRR), as confirmed in 'The Joint Governance Process' section of the concordat (*footnote* - [ETS Provisional Common Framework](#), p.14). The Framework is integrated with the IGRR insofar as if an issue or disagreement cannot be resolved under the UK ETS Authority governance structure, it becomes a dispute and may be raised with the intergovernmental relations secretariat. The dispute will accordingly be escalated to the Interministerial Standing Committee (IMSC) (*footnote* - [ETS Provisional Common Framework](#), p.106). If the dispute remains unresolved, it may be further escalated to the Intergovernmental Relations Council.

Resource Pool, Ways of working and Decision Making

Can you provide more clarity on the role of the 'resources pool' of officials and explain how it relates to other groups established by this framework?

The UK ETS scheme is managed on a day-to-day basis by officials representing the four governments. Together these officials constitute "the Resource Pool", supporting the Authority to take decisions relating to the UK ETS, in addition to providing technical and operational support. The Resource Pool which is accountable to the Authority and only able to act on behalf of the Authority. The roles needed to support each Authority function can be grouped into Leadership and Governance, Operations, Policy, Analysis, Stakeholder Support, and Enablers. Requests for support are channelled through the resource pool leadership and governance support. While the Resource Pool is currently comprised of officials from DESNZ (previously BEIS) due to them being the most resourced partner, all Governments are able to provide resources and expertise is drawn from the Devolved Governments on an ad-hoc basis, particularly in the realms of Operational Policy and Analysis.

How does the framework ensure that the 'resources pool' of officials effectively supports the coordination and implementation of the UK ETS across the four UK governments?

The Framework requires a contact list of officials, and further detail on the roles, responsibilities, and operational procedures of the Resource Pool to be maintained within the UK Emissions Trading Scheme Authority Terms of Reference and Operating Procedures. The Resource Pool is vested with responsibilities for the overall management and coordination of the Authority and Resource Pool Work Plan. The Work Plan is then developed and agreed by all Authority members and is underpinned by the UK ETS Authority Delegation and Oversight Framework. This framework sets out the criteria against which Authority functions can be delegated, and the level of Authority oversight and reporting required. All delegated functions explicitly have appropriate oversight from and engagement with the Authority, and the detail of this is included in the Authority and Resource Pool Work Plan. In all cases where a decision is delegated to the Resource Pool, confirmation of decision and reporting on the delivery of functions is required. Officials from any Government can request work from the Resource Pool to help the Authority as a whole develop policy and deliver the UK ETS.

What specific responsibilities will be assigned to the senior officials board, and how will their decision-making process interact with other governance structures?

The responsibilities of the Senior Officials Board are as set out in the Framework and detailed in the UK ETS Authority Terms of Reference. How the board interacts with the other governance structures depends on the subject matter on hand. Working Group Level Officials are responsible for identifying areas where opportunities or tensions may arise with governance structures outside of the UK ETS and facilitating joint working with the Senior Officials Board as required.

Can you elaborate on the principles outlined in the framework for decision-making processes, particularly regarding the internal clearing processes and expedited processes for the four governments?

The Authority decision making process is highly collaborative, with a minimum 2-week time period built in to ensure all members have the time and opportunity to work through decisions both as an Authority, but also for internal clearances – which vary across the different Governments. For a decision or activity to be expedited, this must be unanimously agreed to be suitable for an expedited process.

What measures are in place within the UK ETS framework to ensure transparency and accountability in decision-making processes across the four UK governments?

The Portfolio Ministers, who represent each of the Governments in the UK ETS Authority, are answerable to the decisions to each of their legislatures. Therefore, transparency is afforded across the government through the normal parliamentary processes for example through the debates of draft legislation on the UK ETS.

Regulators, FCA, and CCC

Can you provide a copy of the Memorandum of Understanding between the Environment Agency and devolved environmental regulators, and the Welsh Government's view on how its arrangements will impact the operation of the UK ETS?

I have attached a copy of the Memorandum of Understanding between the Environment Agency and the devolved environmental regulators. The Environment Agency as the Registry Administrator is beneficial as it allows the Authority to use much valued expertise and experience from the time when they performed the same function under the EU ETS. However, it is important to note that the Environment Agency's function is brought to scrutiny through a variety of Joint Working Groups in the Authority, including the Operations Joint Working Group which is attended by Authority officials across the four governments and devolved government regulators.

How does the UK ETS framework address potential discrepancies in the implementation and enforcement of the scheme across the four UK nations, particularly in terms of environmental regulators and compliance?

The Framework provides for structures in which decisions are made jointly and hierarchically depending on the importance of the decision. Decisions on enforcement and compliance are taken by regulators in accordance with legislation that has been made jointly and therefore discrepancies are unlikely to occur. However, if novel and minor issues emerge, these are discussed, and solutions jointly agreed through Working Groups with the four regulators in attendance. For novel and more critical issues, these are signposted and

escalated for decision and implementation via legislative procedures with sign off by Ministers.

What role will the Climate Change Committee play in the operation and oversight of the UK ETS framework, and how will its recommendations be integrated into policy decisions?

The Climate Change Committee (CCC) advises the Portfolio Ministers of the Authority, as required under CCA 2008. This advice is taken into consideration when arriving at decisions on the UK ETS. The CCC will also be engaged to secure advice and evidence at the planned review points in 2023 and 2028. The CCC does not have a role in the operation or oversight of the Framework.

Stakeholder engagement

What strategies are in place to ensure meaningful and inclusive stakeholder engagement in the development, implementation, and review of the UK ETS?

The UK ETS is a technical and complex scheme which is heavily reliant on a wide evidence base including economic analysis, market data, and the views of stakeholders. Public consultation forms the basis of our engagement, with various key consultations such as the 2019 'Future of UK Carbon Pricing' and the more recent 2022 'Developing the UK ETS'. To ensure stakeholders not only fully understand the issues being consulted on but are also able to engage in more depth, the Authority also carries out open workshops during consultation periods. These enable stakeholders to feed into the development of the various policies and how they should be delivered. The Authority also maintains ongoing stakeholder engagement outside of these consultation periods, with a UK ETS stakeholder group which meets on a monthly basis, and individual stakeholder engagement on an ad hoc basis as appropriate.

Can you provide more information on the stakeholder input process in the dispute avoidance section of the framework?

As set out above, the UK ETS is a technical and complex scheme which draws upon evidence and advice from experts. Given the regulated market nature of the scheme, whilst we engage stakeholders on an ongoing basis, our consultation processes seek evidence from stakeholders to inform how the scheme develops going forward. All of this helps to ensure that decisions are evidence based, which helps avoid disputes as much as possible. Of course, some evidence can be contradictory. This is where the role of the UK ETS analytical function, governance and Inter-Ministerial Group is critical to help resolve these tensions.

International

What strategies are in place to ensure that the UK ETS framework supports the UK's international policy formulation and implementation of international obligations, such as the Kyoto Protocol, Paris Agreement, and CORSIA?

While the UK ETS is a distinct scheme of its own, the elements of the UK ETS Scheme established and governed under the framework such as the UK Registry fulfils the obligations under the Kyoto Protocol by providing accounts for international emissions units. Further work is in progress to explore policy developments to support the implementation of Article 6.2 and 6.4 of the Paris Agreement. Similarly collaborative work is being undertaken

under the auspices of the ETS Framework to further define the relationship between the UK ETS and CORSIA.

How will the four UK governments coordinate their efforts to assess the impact of international trade on managing UK policy divergence and consider any implications within the UK ETS framework?

Impacts of international trade and related policy divergence on ETS is regularly monitored using the engagement the Authority has across the 4 governments via the Resource Pool and working group officials. This engagement enables the Authority to develop policy positions with an understanding of the landscape of global trade and the UK's position within it.

The International Relations Concordat cited in the framework was not concluded as part of the Intergovernmental Relations Review discussed above. In the absence of this concordat, is it your view that intergovernmental cooperation on international relations continues to be governed by the 2001 MoU on devolution?

Yes. Intergovernmental cooperation on international relations is currently governed by the 2001 Memorandum of Understanding and Supplementary Agreements on devolution. However, parties to the Framework will automatically use any updated international relations concordat, and wider principles arising from the Joint Intergovernmental Review, as the basis for such international considerations.

In your view, does the Framework offer the Welsh Government more opportunities to inform and participate in UK foreign policy and international relations work?

Common Frameworks were not intended to provide enhanced engagement on matters relating to international relations work, and the governance structures within it.

However, in areas covered by Common Frameworks and through involvement in negotiations with the EU under the Trade and Cooperation Agreement (TCA), Welsh Government officials work closely with their counterparts in the other Governments of the UK and share information, including on relevant developments in EU law and the implications of the Windsor Framework.

Officials are engaging with the UK Government to ensure that our views on negotiations are clear and to try and avoid a situation where a trade deal places an obligation on us which we cannot, or do not wish to, implement. For example, Welsh Government officials and Ministers have been engaged in preparations for meetings of the TCA Partnership Council and were invited to observe at the Partnership Council meeting on 24 March.

EU

Can you provide more information on the potential implications of a linking agreement between the UK ETS and EU ETS, particularly in areas of devolved competence?

Any potential linking arrangements with the EU ETS are subject to future negotiations. The role of the Scottish Government, Welsh Government, and DAERA in negotiations would be subject to quadrilateral Ministerial dialogue. The role of the Scottish Government, Welsh Government, and DAERA (Officials and Ministers) in the next phase will therefore be subject to further guidance. The implementation of any linking agreement secured with the EU in devolved areas would fall within devolved competence. Therefore, these would need

to be assessed as part of any such negotiations and the relevant portfolio Ministers and legislatures would be engaged.

Does the Welsh Government support linking the UK and EU ETS?

Yes. Given the importance of international cooperation on carbon pricing and the important role international carbon markets can play in attaining not only our climate change goals, but those globally, linking would bring many benefits to Wales and the UK.

How does the framework address potential challenges arising from the phase-out of ozone depleting substances and the management of industrial and air emissions within the context of the UK-EU 'level playing field'?

The EU-UK Trade and Cooperation Agreement (TCA) has some policies that intersect with UK ETS policy, with Article 390 therein referencing the UK and EU carbon pricing systems in relation to greenhouse gas emissions. While TCA is a reserved policy area, the ETS Frameworks recognises the importance of UK Government engaging with the Devolved Governments where these intersects happen on policies within devolved competence, as is the case for the UK ETS. Further detail on the means of such engagement is set out in the response to the question below.

In the context of the Trade and Cooperation Agreement, how will the Welsh Government work with the other UK governments to monitor divergence and alignment to/from EU standards, including to avoid potential retaliation measures?

As mentioned above, UK ETS policy intersects with the TCA and therefore topics relevant to the framework may be considered from time to time by TCA Specialised Committees or the Partnership Council. The Framework therefore provides for where a UK-EU meeting agenda includes an item concerning an area of devolved competence, UKG to facilitate the Devolved Governments' attendance at a similar level to that of the UKG representative. UKG is also required to engage the Devolved Governments as fully as possible in preparation for these meetings regardless of attendance, and on all relevant implementation matters. These provisions help to ensure the Welsh Government's interests are represented and the UK overall would be well-prepared to negotiate in the case of potential retaliation measures.

REUL

Can you clarify the interaction of the UK ETS framework with the Retained EU Law Bill and identify REUL within competence that underpins the framework?

As the ETS operates as a 4-nation scheme, officials across the Authority were engaged in early discussions on which legislation needs to be preserved. Much of the retained EU law in this area was agreed to be inoperable and irrelevant since the creation of the UK ETS.

Following the UK Government's decision to move to preservation-by-default on the REUL Bill, further engagement has been had across the Authority at official level and with lawyers in Welsh government. Only provisions that are no longer relevant to the UK ETS are being revoked and these have no implications for Welsh competence. Any provisions that are required for the functioning of the UK ETS will be preserved. However, we understand that the Committee wishes to see this information made available. We will discuss this within the Authority and propose to annex these to the Common Framework or make the list of REUL available through the REUL process. The Committee will be notified accordingly when this is agreed.

It is also reassuring that the most recent Interministerial Standing Committee paper identified Common Frameworks as the correct mechanism to manage regulatory divergence arising from the REUL Bill. The UK Government's policy paper on 'smarter regulation to grow the economy', released on 10 May, similarly confirms that when using powers in the Bill, Common Frameworks will be used to engage with Devolved Governments on policy and legislative decision-making across the UK.

Could you provide the Welsh Government's assessment of the Retained EU Law Bill's impact on the framework?

There is no identified impact for the reasons set out above.

Monitoring and review

How does the Welsh Government plan to incorporate the recommendations from the Committee regarding the role of legislatures and stakeholders in the review and amendment of frameworks?

The UK Government and Devolved Governments jointly engaged with interested technical stakeholders in 2019 through 'The Future of UK Carbon Pricing' consultation. We are approaching future engagement post implementation on a case-by-case basis. The Welsh Government acknowledges the Committee's suggestions on engagement with legislatures and stakeholders in the review of the Framework. The ETS Framework has an undertaking to review the governance arrangements for the Framework after the 2023 initial review, and the points raised will be included in the Authority discussions in this.

Can you provide more information on how the UK ETS framework will be reviewed and amended, particularly in terms of stakeholder and legislature involvement?

The Authority will conduct an initial review of the Common Framework within 3 months of the conclusion of the first scheme review of the policy, which is due to be carried out in 2023.

The Framework review will look at the governance arrangements and the points raised will be included in the Authority discussions in this.

How does the framework address the Committee's call for the production of annual reports on the operation of the frameworks?

In February, the Interministerial Standing Committee (IMSC) reaffirmed the importance of reporting to legislatures on the operation of Common Frameworks. The IMSC signed off a template for annual reporting post finalisation. The template includes a specific section for policy teams to report on divergence and disputes raised during the course of the year.

More generally, the Welsh Government considers it essential that there is effective scrutiny and monitoring of the operation of Common Frameworks.

IMSC may wish to review some of the more significant crosscutting issues that may emerge from the scrutiny process.

What are the criteria for triggering ad-hoc reviews of the UK ETS framework?

There are no set criteria at this point for triggering ad-hoc reviews of the Framework. However, since the Framework is still in the early days of implementation the Authority will continue to monitor how any developments impact the Framework and instances where these need to be accompanied by ad hoc reviews. This can then inform the review of the Framework mentioned in the response above.

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