

Chair, Climate Change, Environment and Infrastructure Committee

Chair, Economy, Trade and Rural Affairs Committee

Chair, Health and Social Care Committee

23 September 2021

Dear all

Scrutiny by Senedd Committees of Common Frameworks

As you will be aware, the UK and devolved governments have been negotiating common frameworks for managing divergence outside of the European Union since 2017. Common framework agreements typically set processes for the governments to make decisions on when to follow the same rules and when to diverge. In this sense, they have implications for the exercise of devolved competence.

The Senedd and other parliaments in the UK have previously committed to scrutinising common frameworks before they are finalised and, in a recent letter to the Legislation, Justice and Constitution Committee, the new Welsh Government reiterated its view that the importance of frameworks scrutiny cannot be overstated. This letter from the Counsel General provides an update on individual common frameworks and is enclosed for your information. The Counsel General also provided evidence to our Committee this week, during which the common frameworks programme was discussed.

You may be aware that the UK and devolved governments have plans for 26 common frameworks for Wales. In February of this year, the then Counsel General confirmed that most frameworks had been provisionally confirmed and were now in operation. Seven of these have so far been published. We are expecting some frameworks to be brought forward as early as October, although we understand that this timetable is subject to progress in intergovernmental negotiations.

In addition to any work and/or investigations you may initiate on the common frameworks within your remit and given the LJC Committee's role in overseeing the framework programme, we will continue to press for updates from the Welsh Government and will share with you any information received.



I will also be writing to the Business Committee to draw specific attention to this area of work and the impact it may have on committee business.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair



Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution



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07 September 2021

Dear Huw

Thank you for your letter of 16 July. This is a period of considerable activity in the Common Frameworks area and I welcome the opportunity to update you on developments in the programme.

On 31 August, the first fully complete and scrutinised framework, on Hazardous Substances (Planning), was published. This is clearly a landmark in the frameworks programme and illustrates that, though four-Government working is not necessarily a quick and easy process, it is possible to reach agreement on complex issues on an equitable basis across all the nations of the United Kingdom.

The Common Frameworks have been operating as provisional agreements between officials since the end of last year. Over this period many framework policy areas have seen a more open and collaborative approach between the Devolved Governments and the UK Government. For example, in the framework area where I am also the Portfolio Minister, Procurement, officials are finding that they are now working much more as partners. In this way the Common Frameworks programme has been a considerable success. Although some framework areas are more advanced in this regard than others, I consider what we have seen so far to be hugely encouraging and a powerful affirmation of the Common Frameworks programme.

There are, however, several issues which need to be resolved before the Common Frameworks programme can be finalised, most significantly the issues relating to the UK Internal Market Act (the UKIM Act). During the passage of the UK Internal Market Bill through Parliament, the Welsh Government was clear that this legislation was unnecessary and heavy handed.

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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 uncertainty caused by the UKIM Act in terms of the Senedd's ability to legislate in certain areas, prompted my predecessor to commence legal proceedings challenging the UKIM Act by way of judicial review.

However, I recognise the need to progress work on the processes underpinning the Common Frameworks. I have therefore instructed Welsh Government officials to engage in further discussions about the interaction between the UKIM Act and the Common Frameworks on the strict understanding that our engagement is without prejudice to the position taken on the litigation. We remain committed to work with the UK Government, the Scottish Government and the Northern Ireland Executive in good faith, and without prejudice to the legal action, to move this programme forward.

In addition to the interaction between the UKIM Act and the Common Frameworks, officials continue to make progress on significant work to address the difficulties posed by other cross-cutting issues, namely the effect of the Northern Ireland Protocol, references to International Relations and the outcome of the Intergovernmental Relations Review. Progress is being made in all of these areas. The Devolved Governments have shown considerable flexibility and good faith in developing the Common Frameworks programme, most recently demonstrated in changes to the clearance process for provisional frameworks.

The importance of effective scrutiny of these frameworks cannot be overstated. It is essential that the relevant committees of all legislatures are given the opportunity to perform their role in this area. This is a complex and innovative programme of work. It covers a number of subjects, departments, Ministers and, of course, four different Governments. The quality of the final product is important. Deadlines can provide an impetus, but we should not seek to meet deadlines to the detriment of quality. Scrutiny by legislatures, in particular, takes time. Failure to make sufficient progress on all cross-cutting issues would prevent the scrutiny and finalisation of the frameworks. I am meeting with Ministers from the other three Governments on 8 September to discuss, in part, how best to meet the challenges of the programme in a timely fashion.

Policy leads in the framework areas in the four Governments have reached out to their stakeholders in the development of the frameworks. I understand that, as the frameworks move to completion, additional consultation will take place as appropriate. The frameworks programme represents a significant change in the workings of government and stakeholders should be given input into its development.

I look forward to speaking to the committee on 20 September about Common Frameworks and other issues.

I attach, as an appendix to this letter, updates on individual Common Frameworks.

Yours sincerely

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style and is positioned above a short horizontal line.

Mick Antoniw AS/MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

Appendix

Updates on Individual Common Frameworks

(by UK Government departmental areas)

MHCLG Framework

Hazardous Substances (Planning)

This framework was finalised and published on 31 August 2021.

DHSC Frameworks

Organs Tissues and Cells

The version agreed earlier this year remains the most up to date. Officials are expecting updated versions soon for review.

Blood Safety and Quality

The version agreed earlier this year remains the most up to date. Officials are expecting updated versions soon for review.

Nutrition, Health Claims, Composition and Labelling

The current version of the Nutrition and Health Claims Framework which was reviewed by the Senedd remains the same. Officials have been working with the UK Government to agree wording on International Relations, and the Policy Team are now working to build standard text on the TCA into the Framework and Concordat. Cabinet Office have also shared a timeline for publishing the Framework and are meeting with officials in early September to finalise the framework and concordat.

Public Health Protection and Health Security

The framework was provisionally signed off in December 2020. This version of the framework did not recognise the arrangements agreed between the UK and the EU under the Trade and Co-operation Agreement. The framework has now been updated to reflect the TCA and also the Health Security (EU Exit) Regulations 2021.

The updated framework is in the process of being readied for publication and will be shared in due course.

BEIS Frameworks

Late Payments

The version agreed earlier this year is the most up to date. All the Devolved Governments are content. No further changes are currently expected.

Recognition of Professional Qualifications

BEIS recommenced work on the Common Framework, now titled Recognition of Professional Qualifications (RPQ), on June 14 2021, and has presented options for developing the scope of a framework. Welsh Government officials have indicated a preference for arrangements which facilitate the recognition of professional qualifications in line with the scope of returning EU powers, but that all developments must be considered alongside the Recognition of Professional Qualifications Bill's progression through parliament. BEIS has been made aware that UKIM Act implementation should not be a part of the Common Framework.

The Welsh Government expects to see a first draft of a framework by early September.

The Welsh Government has indicated concerns with the timetable outlined for the framework to be completed by 31 December 2021, as this leaves very little time for stakeholder engagement and scrutiny.

Provision of Services

Work on the Provision of Services Framework was postponed at the end of 2020 by consensus agreement of all four Governments of the UK, because of the lack of time to undertake the process with sufficient time to develop a framework before 31 December 2020.

On 20 November 2020 the then Counsel General wrote to BEIS to reiterate the Welsh Government's support for the Common Frameworks programme and to indicate that the Welsh Government would like to see this framework picked up as a matter of priority in 2021. A response was received from Lord Grimstone dated 6 January 2021 outlining that BEIS officials would be in touch to progress the work on both the Services and RPQ Frameworks.

On 17 August BEIS officials contacted Welsh Government officials to review the 2020 work on the Provision of Services Framework and to consider options and next steps.

Should the Minister decide to proceed with the development of the Provision of Services Framework, it is anticipated that work would commence at pace in September 2021.

Public Procurement

Although there have also been some drafting amendments, these have not altered the essence of what was presented to the Senedd previously.

The Outline Framework Agreement and the Concordat are currently separate documents but they are very similar. To avoid duplication, consideration is being given to keeping just one of the two documents, though this work is yet to be started. Text on International Relations needs to be added once it is agreed. The same is true for the text on dispute resolution.

Food Standards Agency Frameworks

Food and Feed Hygiene and Safety

The version agreed earlier this year is the most up to date. The Food Standards Agency is working with Food Standards Scotland to update the current version of the Food and Feed Hygiene and Safety Framework (which was scrutinised by the EAAL Committee on 1 February 2021) to account for committee recommendations and cross-cutting issues once these have been agreed centrally. Subject to agreement on the approach to cross-cutting issues, it is the intention to finalise the Food and Feed Safety and Hygiene Framework.

Food Compositional Standards and Labelling

The version agreed earlier this year is the most up to date. All Devolved Governments are content with content. The current version of the Food Compositional Standards and Labelling Framework which was reviewed by the Senedd remains the same. Subject to agreement on the approach to cross-cutting issues, it is the intention to finalise the Food Compositional Standards and Labelling Framework.

Defra Frameworks

Implementation of EU Emissions Trading System

The summary of the framework is still relevant in that it explains the legislative underpinning and non-legislative arrangements the four Governments have adopted and still have in place. Since the framework was created a range of legislation has been implemented to enable the UK ETS to operate. Stakeholders have also been engaged (including a Call for Evidence and a current Consultation) on developments to the UK ETS. Whilst this will have the effect of making changes to the UK ETS the governance and therefore the intent expressed in the framework remain unchanged.

Radioactive Substances

The framework summary still represents the overall position. The four Governments have progressed work on developing the framework.

Organics

A summary of the Organics Framework is due to be completed in the near future and will be shared with the Senedd. The four Governments continue to work on the further development of the provisional framework, including finalising a draft concordat and operationalising some of the governance arrangements.

Plant Varieties and Seeds

The framework summary still represents the overall position. However, some minor amendments will be made ahead of further stakeholder engagement by the four Governments planned for the early autumn. Work continues between the four Governments to develop the framework further, including finalising a draft concordat.

The following Defra Frameworks are in a similar position:

- **Fertilisers**
- **Agricultural Support**
- **Air Quality**
- **Plant Health**
- **Best Available Techniques**
- **F-Gas & ODS**
- **Zootechnics**

Where summaries exist for these frameworks, they still represent the overall position. For provisional frameworks, work continues between the four Governments to develop each framework further, including updating Framework Outline Agreements and drafting/finalising Concordats as appropriate, and refining/operationalising governance arrangements. Work is also ongoing to consider further stakeholder engagement and the impact of cross-cutting issues.