

Lynne Neagle MS  
Deputy Minister for Mental Health and Wellbeing  
Welsh Government

14 June 2022

Dear Lynne

Food Compositional Standards and Labelling provisional common framework

Thank you for your letter of 21 April 2022 regarding the Food Compositional Standards and Labelling provisional common framework.

Our views on the provisional common framework are set out in the annex.

I note that the Minister for Health and Social Services has recently provided a holding response in respect of the Committee's recommendations in respect of the Public Health Protection and Health Security; Blood Safety and Quality; and Organs, Tissues and Cells (apart from embryos and gametes) provisional common frameworks, stating that "until all legislatures in the UK have had the opportunity to complete scrutiny, [the Welsh Government] will be unable to address these recommendations formally".

In my response to the Minister of 14 June 2022 I note that the Committee's view is that while it is reasonable for the Welsh Government to send a holding response in respect of recommendations that relate to matters that are subject to ongoing intergovernmental negotiations and scrutiny by other UK legislatures, where matters are specific to Wales and the Welsh Government we do expect to receive substantive responses without unnecessary delay.

I look forward to receiving your response by 29 July 2022.

Yours sincerely

A handwritten signature in black ink that reads "Russell George". The signature is written in a cursive style with a long horizontal stroke underneath.

Russell George MS  
Chair, Health and Social Care Committee

cc Emily Miles, Chief Executive, Food Standards Agency

Huw Irranca-Davies MS, Chair, Legislation, Justice and Constitution Committee, Welsh Parliament

Baroness Andrews, Chair, Common Frameworks Scrutiny Committee, House of Lords

Geraint Davies MP, Interim Chair, Environment, Food and Rural Affairs Committee, House of Commons

Lesley Hogg, Clerk and Chief Executive, Northern Ireland Assembly

Gillian Martin MSP, Convenor, Health, Social Care and Sport Committee, Scottish Parliament

William Wragg MP, Chair, Public Administration and Constitutional Affairs Committee, House of Commons

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

# Annex: Food Compositional Standards and Labelling provisional common framework

## Risks and benefits of the common framework approach

1. The purpose of common frameworks is to establish common approaches in some areas that were previously governed by EU law, but that are within areas of competence of the devolved governments or legislatures.<sup>1</sup> They are a key tool for intergovernmental working and discussion on approaches to law and policy now that the UK is no longer a member of the EU.
2. The Food Compositional Standards and Labelling (FCSL) common framework sets out how the governments will work together and make decisions on regulatory alignment and divergence in the post-Brexit context.
3. The structures provided by common frameworks could enhance joint working and promote a shared approach to tackling common challenges. They could offer opportunities for the Welsh Government to influence and inform decisions taken by other governments, as well as providing defined routes for engagement at an international level.
4. However, common frameworks also present potential risks, such as relinquishing regulatory freedom in favour of a common approach, making it harder for Welsh stakeholders to influence decisions, and risking blurring accountability to individual Parliaments.
5. Such benefits and risks are not unique to the common frameworks that we have considered, but cut across the whole common frameworks programme. In February 2022, the Scottish Parliament Constitution, Europe, External Affairs and Culture Committee concluded that:

*"260. [...] Common Frameworks [...] have the potential to resolve the tensions within the devolved settlement through managing regulatory divergence on a consensual basis while facilitating open trade within the UK internal market.*

*261. But the Committee believes there is a risk that the emphasis on managing regulatory divergence at an inter-governmental level may lead to less transparency and Ministerial accountability and tension in the balance of regulations between the Executive and the Legislature".<sup>2</sup>*

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<sup>1</sup> Joint Ministerial Committee (EU Negotiations), *Communiqué*, 16 October 2017

<sup>2</sup> Scottish Parliament Constitution, Europe, External Affairs and Culture Committee, *UK Internal Market inquiry*, 22 February 2022, p.42

6. The correspondence we have received from the Welsh Government in respect of common frameworks has not always clearly articulated the risks and benefits of working through those frameworks, or how they might be managed.

Recommendation 1: The Welsh Government should explain how it will identify and manage risks associated with and arising from the FCSL common framework on an ongoing basis, including how information about such risks will be shared with Senedd committees.

## Implications for making Welsh law and policy

7. The FCSL common framework requires governments to discuss and agree approaches to law and policy, and set out processes for resolving any disputes or disagreements that arise. As such, the framework could, in practice, limit the exercise of devolved competence.

8. This will not only affect the Welsh Government as it makes policy or prepares legislation, but will also affect the development of Senedd Bills. For example, Members who wish to table amendments to Bills passing through the Senedd, or committees that plan to introduce committee Bills, may need to consider the implications of relevant common frameworks, and potentially how to engage with these intergovernmental arrangements.

9. It could also make it more difficult for stakeholders in Wales to influence the development of Welsh law and policy.

10. When the governments agreed principles for common frameworks, they agreed 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.”<sup>3</sup> We regard this as an important principle.

11. In its report in February, the Scottish Parliament Constitution, Europe, External Affairs and Culture Committee recommended that:

*“...there should be a similar agreement between the Scottish Government and Scottish Parliament that, as a minimum, there should be no dilution of public consultation or of parliamentary scrutiny.”<sup>4</sup>*

12. Thought should be given to whether such an agreement between the Senedd and the Welsh Government would be helpful.

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<sup>3</sup> Joint Ministerial Committee (EU Negotiations), [Communique](#), 16 October 2017

<sup>4</sup> Scottish Parliament Constitution, Europe, External Affairs and Culture Committee, [UK Internal Market inquiry](#), 22 February 2022, p.36

Recommendation 2: The Welsh Government should confirm that the FCSL framework will lead to no dilution of public consultation or of parliamentary scrutiny in policymaking or the legislative process.

Recommendation 3: The Welsh Government should explain how it will ensure that the FCSL framework will not limit the role of the Welsh Government, the Senedd, or stakeholders in Wales when making law and policy for Wales. This should include how the Welsh Government will facilitate the engagement of committees or Members of the Senedd with the common framework if required, to ensure that framework does not represent a barrier to the operation of the Senedd's legislative procedures.

## Transparency

**13.** We recognise that the process of reaching four-Government agreement on common frameworks is necessarily iterative and can be complex. It was helpful that an initial draft version of the FCSL provisional common framework was published in March 2021. However, it is far from ideal that the final provisional framework was not published for scrutiny until February 2022, especially as it had already been in operation since the end of the transition period on 31 December 2020.

**14.** The framework will, rightly, remain under review. However, it includes limited information about ongoing reporting to Parliaments and stakeholders, engagement with stakeholders, or scrutiny of changes proposed during review and amendment processes. We explore each of these issues below.

### Reporting on the operation of frameworks

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**15.** Our letter of 21 March 2022 to the Minister for Health and Social Services (Minister for HSS) in respect of the Public Health Protection and Health Security (PHPHS), Blood Safety and Quality (BSQ), and Organs, Tissues and Cells (other than embryos and gametes) (OTC) provisional common frameworks,<sup>5</sup> in late 2021, the House of Lords Common Framework Scrutiny Committee noted its disappointment that those frameworks did not include commitments to ongoing engagement with Parliament.<sup>6</sup>

**16.** In a letter to the Fifth Senedd's External Affairs and Additional Legislation Committee in January 2020, the then Counsel General and Brexit Minister committed to "lay a report before the Senedd at

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<sup>5</sup> [Letter from the Chair of the Health and Social Care Committee to the Minister for Health and Social Services](#), 21 March 2022

<sup>6</sup> [Letter from the Chair of the House of Lords Common Framework Scrutiny Committee to the Minister of State for Health](#), 23 November 2021; [Letter from the Chair of the House of Lords Common Framework Scrutiny Committee to the Minister of State for Health](#), 14 December 2021

least annually, which provides an assessment of the functioning of each Common Framework”.<sup>7</sup> We welcome this commitment from the Welsh Government.

**17.** In November 2021, the Counsel General told the Senedd’s Legislation, Justice and Constitution Committee that the four governments had “committed to future reporting on the frameworks as part of the process for the oversight of the frameworks within the Intergovernmental Relations Review”, and that this would assist Senedd committees in monitoring frameworks in the longer term.<sup>8</sup>

**18.** In January 2022, in response to questions about how the Senedd and stakeholders would be updated on the continuing operation of the frameworks, including any changes, the Minister for HSS told us that:

*“The expectation is that reports on frameworks will be public documents once they are signed off by portfolio Ministers and will be made available to the relevant committees in the four nations as well as relevant stakeholders.”<sup>9</sup> [emphasis added]*

**19.** The Counsel General repeated this ‘expectation’ in oral evidence to the Legislation, Justice and Constitution Committee on 31 January 2022.<sup>10</sup> In a letter to that Committee in March 2022, he stated that the “exact format of the annual reporting mechanism is currently being worked through at an official level”.<sup>11</sup>

**20.** We appreciate that common frameworks and associated reporting are intergovernmental arrangements, and that the Welsh Government may not be able unilaterally to guarantee that these joint reports will be published. Nevertheless, we are concerned that full agreement has not yet been reached on this important point of transparency, and that a commitment to publishing reports is not included in the FCSL framework.

Recommendation 4: In line with the recommendation we made in respect of the PHPHS, BSQ and OTC frameworks, the Welsh Government should secure intergovernmental agreement to update the FCSL framework to include a commitment to update legislatures on the ongoing functioning of the framework after the conclusion of each review.

If this commitment is not included in the framework, the Welsh Government should confirm that joint

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<sup>7</sup> [Letter from the Counsel General and Brexit Minister to the External Affairs and Additional Legislation Committee](#), 23 January 2020

<sup>8</sup> [Letter from the Counsel General and Minister for the Constitution to the Legislation, Justice and Constitution Committee](#), 19 November 2021

<sup>9</sup> Letter from the Minister for Health and Social Services (BSQ and OTC common frameworks), 17 January 2022

<sup>10</sup> Legislation, Justice and Constitution Committee, RoP [paragraph 54], 31 January 2022

<sup>11</sup> Letter from the Counsel General and Minister for the Constitution to the Legislation, Justice and Constitution Committee, 2 March

reports on the framework will nevertheless be published in line with its stated expectation.

If intergovernmental agreement on this point cannot be secured, the Welsh Government should explain the reasons why intergovernmental reports will not be published, and confirm that it will nevertheless publish unilateral annual reports in line with its previous commitment.

## Stakeholder engagement

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**21.** Like the PHPHS, BSQ and OTC common frameworks, the FCSL framework offers limited commitments in respect of meaningful ongoing stakeholder engagement. In our letter to the Minister for HSS on 21 March 2022 about the PHPHS, BSQ, and OTC provisional common frameworks<sup>12</sup> we noted that the House of Lords Common Framework Scrutiny Committee had similar concerns on this matter.<sup>13</sup>

**22.** In this context, we welcome the Welsh Government's commitment that "if changes are proposed to the scope or functioning of the FCSL Framework, stakeholders will be consulted in advance of Ministerial agreement".<sup>14</sup>

**23.** However, we continue to agree with our colleagues in the House of Lords that there must be ongoing, open and meaningful engagement with stakeholders on the operation of common frameworks. We believe that this should be provided for within the frameworks themselves.

Recommendation 5: In line with the recommendation we made in respect of the PHPHS, BSQ and OTC frameworks, the Welsh Government should secure intergovernmental agreement to update the FCSL common framework to include:

- Provision that the first review of each framework should include an open consultation process with stakeholders.
- Commitment to ongoing stakeholder and parliamentary engagement.

Should either of these outcomes not be secured, the Welsh Government should explain the reasons why not, and outline what will be done instead to ensure that there is ongoing, open and meaningful engagement with stakeholders across the UK.

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<sup>12</sup> [Letter from the Chair of the Health and Social Care Committee to the Minister for Health and Social Services, 21 March 2022](#)

<sup>13</sup> [Letter from the Chair of the House of Lords Common Framework Scrutiny Committee to the Minister of State for Health, 23 November 2021](#); [Letter from the Chair of the House of Lords Common Framework Scrutiny Committee to the Minister of State for Health, 14 December 2021](#)

<sup>14</sup> [Letter from the Minister for Health and Social Services \(BSQ and OTC common frameworks\), 17 January 2022](#); [Letter from the Minister for Health and Social Services \(PHPHS common frameworks\), 17 January 2022](#)

**24.** We welcome the commitment in the Deputy Minister for Mental Health and Wellbeing's (Deputy Minister for MHW) letter to us on 21 April 2022 that "The Senedd will be informed of upcoming review periods in order to feed into the process".<sup>15</sup>

Recommendation 6: The Welsh Government should clarify when the first review of the FCSL framework is anticipated to take place, and how far in advance of an upcoming review period the Senedd will be informed.

**25.** We also reiterate the recommendation we made in respect of the PHPHS, BSQ and OTC frameworks, that to avoid duplication, it would be helpful for such notification to include information about how and when stakeholders will be engaged in any particular review, and how and when any consultation responses will be made public.

Recommendation 7: When notifying the Senedd of upcoming reviews of common frameworks, the Welsh Government should also provide information about how it proposes to consult with stakeholders, including how and when any consultation responses will be made public.

## Dispute resolution

**26.** We welcome the Welsh Government's commitment to notify the relevant Senedd committee(s) of disputes raised under common frameworks. As we noted in our letter to the Minister for HSS in respect of the PHPHS, BSQ and OTC frameworks, our view is that, to ensure proportionality, the Welsh Government need only notify Senedd committees of disputes that are escalated to Ministerial level.<sup>16</sup>

**27.** The initial draft of the FCSL common framework was published before the Intergovernmental Relations Review was completed, but noted that it would be updated to reflect the Review's outcomes. The Review was completed in January 2022, including a revised inter-ministerial dispute resolution process through which disputes over common frameworks can be escalated.<sup>17</sup> However, the final provisional FCSL common framework published in February 2022 does not reflect the revised inter-ministerial dispute resolution process.

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<sup>15</sup> Letter from the Deputy Minister for Mental Health and Wellbeing, 21 April 2022

<sup>16</sup> Letter from the Chair of the Health and Social Care Committee to the Minister for Health and Social Services, 21 March 2022

<sup>17</sup> UK Government, *Policy paper: review of intergovernmental relations*, 13 January 2022

Recommendation 8: The Welsh Government should confirm that, before it is finalised, the FCSL framework will be updated to reflect the new inter-ministerial dispute resolution process set out in the review of intergovernmental relations published in January 2022.

**28.** We note that the framework does not specify any timelines or time limits for dispute resolution. We asked the Deputy Minister for MHW about this in March 2022. Responding in April 2022, she said:

*"It is recognised that disputes may vary in nature, complexity and operational context and therefore a set time limit would not be conducive to reaching the best outcomes for all governments".<sup>18</sup>*

**29.** While we recognise that disputes will vary as the Deputy Minister suggests, a lack of time limits could result in delays to Welsh Government legislation or policy decisions until the dispute has been resolved, with knock on implications for the time available for scrutiny, implementation or spending.

**30.** In addition, in response to our questions about the dispute resolution process, the Deputy Minister for MHW stated:

*"It will be imperative, however, that consumers, industry bodies and business are consulted in a timely manner to influence decision making on any proposed changes to food compositional standards and labelling policy, due to the significant impact changes could have on business".<sup>19</sup>*

**31.** We agree. However, there is no provision for stakeholder engagement in dispute resolution in the FCSL common framework.

Recommendation 9: The Welsh Government should seek intergovernmental agreement to update the dispute resolution process in the FCSL framework to provide for engagement with and input from stakeholders including consumers, industry bodies and businesses.

## Scope of the FCSL common framework

**32.** The FCSL framework sets out that changes will be in scope if a government proposes a change to law or policy:

- In an area of returning powers;
- In an area where EU law allows different domestic legislation to achieve common outcomes (such as national rules for curds and mincemeat in the Jam and Similar Products Regulations); or
- For requirements for establishments based in, or products circulated in, only one part of

<sup>20</sup> Letter from the Deputy Minister for Mental Health and Wellbeing, 21 April 2022

<sup>21</sup> Letter from the Deputy Minister for Mental Health and Wellbeing, 21 April 2022

the UK.

**33.** This means that the FCSL framework requires joint decision-making in some areas where the four governments previously had autonomy to regulate differently when the UK was in the EU.

**34.** The FCSL framework is broader in scope than other related frameworks. For example, the Food and Feed Safety and Hygiene (FFSH) framework provides that changes will be in scope in areas of returning powers, and only in certain circumstances. It is not clear to us why different approaches have been taken for the different frameworks.

**35.** The Deputy Minister for MHW told us in April 2022 that changes to the law in areas where the EU allowed national measures to achieve common outcomes (for example the rules for curds and mincemeat in Jam and Similar Products Regulations) will be within the scope of the framework as it relates to joint working, but will not be bound by dispute resolution.<sup>20</sup> However, this position does not appear to be reflected in the FCSL framework itself. Such changes are outside the scope of the FFSH framework.

Recommendation 10: The Welsh Government should set out how it will ensure that the FCSL framework will maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as was afforded by current EU-derived rules.

Recommendation 11: The Welsh Government should seek intergovernmental agreement to amend the FCSL framework to provide that changes to the law in areas where the EU allowed national measures to achieve common outcomes are not subject to requirements for joint decision-making or bound by the dispute resolution process.

**36.** In response to our question about why changes to the law that apply only to businesses established or products circulated in Wales would be within the scope of the framework, the Deputy Minister for MHW responded that the inclusion of such changes within the scope of the framework would ensure that Ministers were “informed of the approaches recommended in other nations, and that consensus should be sought on the approaches to take, whether consistent across nations or different”.<sup>21</sup> We note, however, that under the common framework on food safety, such changes are

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<sup>20</sup> Letter from the Deputy Minister for Mental Health and Wellbeing, 21 April 2022

<sup>21</sup> Letter from the Deputy Minister for Mental Health and Wellbeing, 21 April 2022

subject only to notification and are not within the scope of the joint working or decision-making arrangements.

Recommendation 12: The Welsh Government should seek intergovernmental agreement to amend the FCSL framework to provide that changes to the law that apply only to businesses established or products circulated in Wales are not subject to requirements for joint decision-making or bound by the dispute resolution process.

**37.** The FCSL framework provides that changes to non-EU derived law on food composition (such as rules on products containing meat) will be subject to discussion through the framework, but not bound by the dispute resolution process. In evidence submitted to the Scottish Parliament Health, Social Care and Sport Committee, Quality Meat Scotland called for more clarity on what will happen if there is a disagreement.<sup>22</sup> We agree that it would be helpful for stakeholders to have clarity on how such matters, which fall outside of the dispute resolution processes, would be resolved.

Recommendation 13: The Welsh Government should explain the process that would be followed if there is a disagreement on a change to the law that is subject to joint working through the FCSL framework but not bound by the dispute resolution mechanism.

## **Role of the Foods Standards Agency**

**38.** The Deputy Minister for MHW told us that staffing capacity for the Food Standards Agency (FSA) in Wales has been increased, which “allows the FSA in Wales to contribute to developing policy in relation to food labelling and compositional decisions for Wales”. She adds that staffing capacity will be kept under review, but notes that the review of FSA Wales announced in June 2021 has not been progressed because it has not been possible to procure a suitable contractor to undertake the work. A further procurement exercise will be run later in 2022.<sup>23</sup>

**39.** We welcome the assurance that there is appropriate capacity and expertise in the FSA in Wales to deliver policy that works effectively for Wales, but are disappointed to note that the planned review of the FSA in Wales has not yet taken place.

Recommendation 14: The FSA in Wales should continue, through its annual report and such other means as may be appropriate, to keep the Senedd updated on its staffing and policy development capacity, including its assessment of whether it has sufficient capacity to deliver policy that works for Wales through the FCSL framework.

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<sup>22</sup> Quality Meats Scotland, *Written submission to the Scottish Parliament Health, Social Care and Sport Committee*, April 2022

Recommendation 15: The Welsh Government should provide an update before the end of 2022 on progress made on the proposed review of the FSA in Wales, including steps that have been taken to procure a suitable contractor to undertake the work.

## Review of retained EU law

**40.** The UK Government has set out its intention to legislate to enable retained EU law to be amended more easily.<sup>24</sup>

**41.** In her letter of 17 January 2022, the Minister for HSS stated that any proposed amendment or repeal of retained EU law would be undertaken through a “separate process” to the frameworks.<sup>25</sup>

**42.** However, the UK Government has subsequently said that it is:

*“...committed to the proper use of Common Frameworks and will not seek to make changes to retained EU law within Common Frameworks without following the ministerially-agreed processes in each framework”.*<sup>26</sup>

**43.** Managing divergence between different parts of the UK in areas covered by retained EU law is a core purpose of the common frameworks programme. It is therefore important that any amendment or repeal of retained EU law in common framework areas be taken through the relevant common frameworks, not a “separate process”.

Recommendation 16: The Welsh Government should confirm that any proposed amendments or repeals of retained EU law within the scope of the FCSL framework will be undertaken through the common framework and not by a separate process.

Recommendation 17: The Welsh Government should commit to notifying the Senedd, including the relevant committee(s), of any proposals to amend or repeal retained EU law within the scope of the FCSL framework that applies to or affects Wales. Such notifications should include an explanation of the Welsh Government’s position on the proposal.

## UK Internal Market Act 2020

**44.** Part of the purpose of the FCSL framework is to ensure the smooth functioning of the UK internal market.

**45.** The UK Internal Market Act 2020 (the 2020 Act) sets out new market access principles in law. In essence, the principles aim to allow goods permitted or imported into any one part of the UK to be

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<sup>24</sup> UK Government, *The benefits of Brexit: how the UK is taking advantage of leaving the EU*, January 2022

<sup>25</sup> [Letter from the Minister for Health and Social Services \(BSQ and OTC common frameworks\)](#), 17 January 2022

<sup>26</sup> UK Government, *The benefits of Brexit: how the UK is taking advantage of leaving the EU*, January 2022, p.33

sold or supplied in any other part, with some exceptions. The UK and devolved governments have agreed a process for considering UK Internal Market Act exclusions in common framework areas.<sup>27</sup>

**46.** The Welsh Government's view is that the 2020 Act implicitly diminishes the powers of the Senedd and the Welsh Government.<sup>28</sup>

**47.** In her letter of 21 April 2022, the Deputy Minister for MHW confirmed that the FCSL common framework will "operate in the context of the UK Internal Market Act 2020 (UKIMA), where the effect will be determined on a case-by-case basis". She added that there were "no intentions to request an exclusion".<sup>29</sup>

**48.** However, the framework does not include any reference to the 2020 Act or to the exclusion process.

**49.** As we noted in our letter to the Minister for HSS on 21 March 2022 about the PHPHS, BSQ, and OTC provisional common frameworks<sup>30</sup> we agree with our colleagues on the House of Lords Common Frameworks Scrutiny Committee that frameworks should be updated to reflect their interaction with the 2020 Act and to acknowledge the process for agreeing exclusions from that Act.<sup>31</sup>

Recommendation 18: In line with the recommendation we made in respect of the PHPHS, BSQ and OTC frameworks, the Welsh Government should secure intergovernmental agreement to update the FCSL framework to refer to their interaction with the UK Internal Market Act 2020 and acknowledge the process for agreeing exemptions from that Act.

## International obligations

**50.** Part of the purpose of common frameworks is to ensure compliance with international obligations.

**51.** However, there is an inconsistent approach to international obligations across the FCSL framework and the frameworks that apply to food safety and nutrition. For example, the FCSL framework makes no reference to:

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<sup>27</sup> UK Government, *Guidance: process for considering UK Internal Market Act exclusions in common framework areas*, 10 December 2021

<sup>28</sup> Welsh Government, *Written Statement: legal challenge to the UK Internal Market Act 2020*, 18 January 2021

<sup>29</sup> Letter from the Deputy Minister for Mental Health and Wellbeing, 21 April 2022

<sup>30</sup> Letter from the Chair of the Health and Social Care Committee to the Minister for Health and Social Services, 21 March 2022

<sup>31</sup> Letter from the Chair of the House of Lords Common Framework Scrutiny Committee to the Minister of State for Health, 14 December 2021

- How governments will work together on the implementation of relevant international law



or standards, as set out in the nutrition framework.

- Whether governments will seek to agree positions ahead of significant international summits on standards (as EU Member States do), as set out in the nutrition framework.

**52.** There are also inconsistencies in respect of the UK's representation on international bodies. For example, the nutrition framework provides for devolved representation at meetings of the Codex Alimentarius Commission, while the FFSH framework provides only for Defra/FSA attendance at these meetings.

Recommendation 19: The Welsh Government should secure intergovernmental agreement to update the FCSL framework to reconcile the inconsistencies in the approach to international obligations. This includes matters relating to the UK's representation and involvement in international bodies, and the inclusion in the FCSL framework of fewer references to international obligations when compared to frameworks relating to food safety and nutrition (which engage the same cross-cutting international obligations).

**53.** Responding to our question about how governments would work together to agree positions in relation to international food standards, the Deputy Minister for MHW told us that "the parties will automatically use any updated International Relations Concordat, and the wider outcomes of the Joint Intergovernmental Relations Review, as the basis for such international considerations".<sup>32</sup> This is reflected in the framework. However, despite the Joint Intergovernmental Relations Review being completed in January 2022, the International Relations Concordat has yet to be updated.

Recommendation 20: The Welsh Government should confirm whether, in the absence of an updated International Relations Concordat, it is content with its role in the development of international policy within the scope of the FCSL framework.

## UK-EU obligations

**54.** The UK Government has acknowledged that the FCSL framework intersects with the Trade and Cooperation Agreement (TCA).<sup>33</sup> The Deputy Minister for MHW told us in April 2022 that:

*"The FCSL Framework was not intended to provide enhanced engagement on matters relating to the UK-EU Trade and Co-operation Agreement. The FCSL*

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<sup>32</sup> Letter from the Deputy Minister for Mental Health and Wellbeing, 21 April 2022

<sup>33</sup> [Letter from the Parliamentary Secretary to the Cabinet Office to the House of Lords Common Frameworks Scrutiny Committee](#), 24 May 2021

*Framework is a mechanism for UK-wide co-operation in relation to the devolved*

*matters of food compositional standards and labelling policy".<sup>34</sup>*

**55.** However, other common frameworks do provide for Welsh Government engagement in TCA committees—this is something we welcome, as it supports the aim of the common frameworks programme to ensure compliance with international obligations. The FCSL framework, conversely, makes no reference to the TCA, upon the terms of which the UK and EU currently trade, including in food products. Consequently, the FCSL framework does not provide for the possibility of Welsh Government engagement in relevant TCA committees.

Recommendation 21: The Welsh Government should seek intergovernmental agreement to ensure that the FCSL framework includes information to explain its interaction with the Withdrawal Agreement and the TCA, even where such information clarifies only that there is no expected impact. This would facilitate the understanding of the Senedd and stakeholders.

Recommendation 22: The Welsh Government should seek intergovernmental agreement to ensure that the FCSL framework includes provision for devolved engagement in UK-EU fora.

## **Northern Ireland Protocol**

**56.** Under the Northern Ireland Protocol, any changes to EU law on food compositional standards and labelling must be applied in Northern Ireland.

**57.** The frameworks provide information about how governments will consider the implications of changes to law and policy in Northern Ireland and Great Britain for divergence, but offers limited detail about how this will work in practice.

**58.** As we noted in our letter to the Minister for HSS on 21 March 2022 about the PHPHS, BSQ, and OTC provisional common frameworks<sup>35</sup> we agree with our colleagues on the House of Lords Common Frameworks Scrutiny Committee that common frameworks should be updated to provide additional detail about when changes introduced in Northern Ireland through the Protocol will be considered in the relevant frameworks.<sup>36</sup>

Recommendation 23: In line with the recommendation we made in respect of the PHPHS, BSQ and OTC frameworks, the Welsh Government should secure intergovernmental agreement to update the

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<sup>34</sup> Letter from the Deputy Minister for Mental Health and Wellbeing, 21 April 2022

<sup>35</sup> [Letter from the Chair of the Health and Social Care Committee to the Minister for Health and Social Services](#), 21 March 2022

<sup>36</sup> [Letter from the Chair of the House of Lords Common Framework Scrutiny Committee to the Minister of State for Health](#), 14 December 2021

FCSL framework to include additional detail on when changes introduced in Northern Ireland through the Northern Ireland Protocol will be considered in this framework.

**59.** The Deputy Minister for MHW told us in April 2022 that:

*"Horizon-scanning processes are in place to monitor upcoming EU changes that will need to be implemented in Northern Ireland. The FCSL Framework ensures that any proposals for divergence among the GB nations are subject to four-nation consideration and that Ministers in all four nations have the opportunity to raise a dispute with their counterparts".<sup>37</sup>*

**60.** She added that potential EU-driven legislative changes would be considered by the four-nation FCSL Officials Group, and noted that "divergence will emerge over time".<sup>38</sup> This is despite previous Welsh Government statements that it intends to maintain and improve upon EU standards. For example, the Counsel General told the Legislation, Justice and Constitution Committee in January 2022:

*"One of the principles and positions the Welsh Government has taken throughout this process is that there should be no derogation from the standards that we actually hold to at the moment, and that the EU standards should be the very minimum that we should have. Of course, it has always been the case with EU law that they've always been minimum standards; they've never been something that have prevented any member of the European Union from wanting to go beyond. So, as far as, I think, Welsh Government is concerned, we want to maintain those standards. Where we can improve upon those standards, we want to improve upon those standards".<sup>39</sup>*

Recommendation 24: The Welsh Government should explain what role the FSA in Wales will play in horizon-scanning, and how the risks and benefits for Wales of keeping pace with changes in Northern Ireland and the EU in respect of food compositional standards and labelling will be assessed.

Recommendation 25: The Welsh Government should clarify its position on whether it intends to keep pace with EU standards in areas within the scope of the FCSL framework.

<sup>37</sup> Letter from the Deputy Minister for Mental Health and Wellbeing, 21 April 2022

<sup>38</sup> Letter from the Deputy Minister for Mental Health and Wellbeing, 21 April 2022

<sup>39</sup> Legislation, Justice and Constitution Committee, RoP [paragraph 118], 31 January 2022

Recommendation 26: Where changes are made to EU standards on matters that fall within the scope of the FCSL framework, the Welsh Government should assess the impact on Welsh trade. Such impact assessments should be shared with the Senedd.

## International trade

**61.** Common frameworks aim to facilitate negotiation and implementation of international trade agreements. The Deputy Minister for MHW told us that the FCSL framework would provide opportunities for discussions of UK positions on FCSL policy issues, including where such issues may be relevant to the negotiation or implementation of a trade agreement.<sup>40</sup>

Recommendation 27: The Welsh Government should explain how the FCSL framework's governance structures will interact with the inter-ministerial group on trade, and how these groups will engage with relevant stakeholders.

Recommendation 28: The Welsh Government should clarify whether disagreements on trade agreement negotiations in respect of food compositional standards and labelling could be addressed through the FCSL framework.

<sup>40</sup> Letter from the Deputy Minister for Mental Health and Wellbeing, 21 April 2022