



The Scottish Parliament
Pàrlamaid na h-Alba

The Baroness Andrews OBE
Chair
House of Lords Common
Frameworks Scrutiny Committee

Via email only

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22 December 2020

Dear Lady Andrews

UK Common Frameworks – Provisional UK Common Framework on Nutrition labelling, Composition and Standards

I am writing to bring to your attention some recent work which has been undertaken by the Health and Sport Committee of the Scottish Parliament on the provisional UK Common Framework on Nutrition labelling, Composition and Standards.

I understand your committee has also recently considered the provisional framework.

Attached is correspondence we have issued to Mairi Gougeon MSP, Minister for Public Health, Sport and Wellbeing setting out our commentary on our consideration of the provisional framework to date.

Yours sincerely

Lewis Macdonald
Convener, Health and Sport Committee



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Mairi Gougeon MSP
Minister for Public Health, Sport
and Wellbeing

cc. Bruce Crawford MSP
Convener Finance and
Constitution Committee

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Dear Minister

UK Common Frameworks – Provisional UK Common Framework on Nutrition labelling, Composition and Standards

This letter sets out the Health and Sport Committee's commentary on the Provisional UK Common Framework on Nutrition labelling, Composition and Standards.

To inform the Committee's consideration of the NLCS Provisional Framework we wrote to your predecessor with a series of questions on [17 November](#). He responded to this letter on [30 November](#).

The Committee also held two oral evidence sessions, the first with stakeholders on the [1 December](#) and the second with Mr FitzPatrick on [8 December](#).

You may also wish to note that the Committee recently [responded](#) to the Finance Committee's request for our views on the impact of Brexit on Devolution. In our response we detail the role we envisage the Parliament and Committees should play in consideration of common frameworks. We have sought to adopt our proposed approach in consideration of this our first provisional framework.

We understand the NLCS provisional framework is one of the first to be considered by the Scottish Parliament. It is therefore important to recognise that the approach adopted to scrutinise this framework may act as a guide to future scrutiny for others.

Parliament as conduit between stakeholders and Scottish Government

We held an evidence session with stakeholders as it is important to hear whether their views have been taken account in the NLCS provisional framework.

Stakeholders referred to frameworks as having been “invisible” and “under the radar”. Those stakeholders who had been consulted on the provisional framework suggested this had been at an introductory stage and wasn’t extensive.

We are concerned consultation on this framework has not been widespread. Our consideration has therefore brought the framework to the attention of a wider audience and raised its profile amongst stakeholders.

At our evidence session with Mr FitzPatrick he referred to the committee’s role being crucial to this process.

- **We consider it is important that going forward framework development is more timely and participative. What steps will the Scottish Government take to ensure this is the case given the constraints within which you are required to operate?**
- **On bringing forward future provisional frameworks to the Parliament it would assist our scrutiny if you could confirm:**
 - **Information on the consultation – a copy of the document that was consulted on and/or the questions that were asked**
 - **Who was consulted and at what points in the process this occurred**
 - **The responses received**
 - **The outcome of the consultation including whether changes were made to the final framework as a result and if not the reasons why no change was made**
 - **Are there any Scotland specific policies that the framework protects, if so what are they?**
- **The Scottish Government acknowledge the Committee has a role to play in highlighting stakeholders issues and concerns. However, we have only been invited to become engaged with this framework as it approaches its final drafting. What steps can the Scottish Government take to ensure our role in highlighting stakeholders concerns or issues can happen timely ensuring their comments inform decision taking?**
- **Going forward as this Framework is finalised and implemented what further consultation and engagement will stakeholders have in it?**

Looking at frameworks in silo

We understand that the NLCS framework is one of a number being developed across food and nutrition policy.

On the 30 November we received the Food and Feed Safety and Hygiene (FFSH) provisional Common Framework. We understand other relevant frameworks in this

policy area include one on Food Compositional Standards and Labelling Framework. We are yet to have sight of that, or any detail regarding its contents.

It is challenging for the Committee and stakeholders to determine if the provisional frameworks are encapsulating all the relevant food and nutrition policy issues until we see the complete picture of all relevant frameworks. This point was illustrated in evidence from one stakeholder expressing concern that novel foods had been omitted from the NLCS Framework. The position only became clear when Mr FitzPatrick confirmed in evidence that novel foods was being addressed in the FFSH provisional framework.

It is difficult for the Committee to reach a view on only the part of the jigsaw that is the food and feed safety common frameworks.

Recent developments in EU Exit negotiations and UK legislation

When you gave evidence to the Committee on the 8 December negotiations on Britain exiting the transition period with a trade and security deal were ongoing. The UK Internal Market Bill was also being considered by the UK Parliament.

We explored with him the issue of the interoperability of this framework and the Ireland/Northern Ireland Protocol. When we asked about food and drink business planning to halt exports to Northern Ireland for the months following 31 December we were told no reassurances was available at this point.

Mr FitzPatrick also expressed concern the UK Internal Market Bill could remove the primacy of common frameworks.

- **Are you able to provide an update on the Scottish Government's position on the primacy of frameworks and the interoperability of this framework and the Ireland/Northern Ireland Protocol following recent developments at a UK and EU level? If not, then please advise when you anticipate a degree of certainty will be available allowing our work on this aspect of the framework to be concluded?**

Monitoring of framework implementation and ensuring protection of public health

At the evidence session on 8 December Mr FitzPatrick spoke of common frameworks acting as both a driver for providing a consistent approach across the four nations and acknowledgment of policy divergence. He stated the Scottish Government view was the law in Scotland should be aligned with EU law only when such alignment would be appropriate and in Scotland's best interests. He also told the Committee the success of the framework could be measured by whether public health in Scotland remains protected. We consider going forward that the Parliament will have a role to play to assess common frameworks deliver against these Scottish Government aims.

It is important the Parliament ensures the voice of relevant Scottish stakeholders, including industry and regulators has been heard. Also, that the decisions reached within the framework will enable the delivery of the best outcomes for Scotland.

The Committee has a role to assess whether this framework and those with which it aligns will afford the opportunity to protect and improve public health in Scotland.

It is also important consideration is given to what level of engagement and how frequently the Parliament and Committee is kept abreast of the framework's operation.

We observe the House of Lords Committee Common Frameworks Scrutiny Committee in its letter to the UK Government stated—

“We note that there is no mention of Parliament being part of the review process. However, an annual report on the activities of the NLCS Policy Group, including on the levels of divergence and the extent to which the dispute resolution process has been utilised, will be submitted to Ministers and may be used to inform any reviews. Is there a reason why this report could not be simultaneously provided to the UK Parliament and devolved legislatures? Do you envisage any other opportunities for parliamentary involvement in the review of this common framework?”

We support the suggestion that the annual report on the activities of the NLCS Policy Group be notified to the Committee. It would assist if this annual report could contain a summary of the changes made under the framework over the year and a forward look indicating expected changes in the coming year. It would also be helpful to have an indication of when the first NLCS Policy Group report would expect to be produced.

In addition to the annual report we consider that for the Committee's monitoring of developments to be proportionate and timely the Committee should also be provided with updates by the Scottish Government when material changes in Scottish procedures under this framework are proposed. The Committee should not have to await receipt of the annual report to learn of developments that have already taken place. The Committee should be provided an opportunity to input in good time to comment on and influence proposed approaches. It would assist the Committee if the Scottish Government could set out how such a request could be facilitated given both our scrutiny role and the Scottish Government's monitoring and role in the framework's implementation and ongoing development.

Timing of scrutiny

The Committee were originally to respond to the provisional framework within 28 days of receipt. No summary of the provisional framework was provided in advance. We replied indicating it would not be possible to adequately consider and finalise our consideration within the timescales requested.

Detailed scrutiny of a provisional framework requires sufficient time to be provided to enable us to seek written and oral views from stakeholders, and an opportunity to

engage with the Scottish Government. A more realistic timescale for consideration of this specific framework would have been ten weeks.

The specific period to consider a provisional framework will require to be variable depending upon the complexity and size of the proposed policy. We consider there must be a flexibility of approach here.

We suggest the need for an agreed minimum period for consideration of provisional frameworks which we hope is not then translated into the deadline for the Parliament being involved.

We note that other legislators are also requiring time to ensure they can scrutinise the provisional framework appropriately.

- **Can you provide an assurance that the Scottish Government will build sufficient time into its timetable for the development and completion of provisional frameworks to enable the Scottish Parliament to conduct its scrutiny function effectively?**

As discussed above we consider there to be a role for the Committee to be kept abreast of updates by the Scottish Government when material changes in Scottish procedures under this framework are proposed. We seek assurances that the Scottish Government will in updating proposed changes allow appropriate time for our scrutiny.

To help inform the Committee's continued scrutiny of the other provisional frameworks it would be helpful if a response could be received by **Wednesday 13 January**.

A copy of this letter will be sent to the other legislators currently considering this provisional framework.

Yours sincerely

Lewis Macdonald
Convener, Health and Sport Committee