

Lewis Macdonald MSP
Convenor
Health and Sport Committee
T3.60
Scottish Parliament
Edinburgh
EH99 1SP

14 January 2021

Dear Lewis,

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

Thank you for your letter of 22 December 2020, which set out the Health and Sport Committee's commentary on the provisional UK common framework on Nutrition Labelling, Composition and Standards (NLCS) and contained a number of questions relating to the framework.

My response, which has been prepared in discussion with officials from Food Standards Scotland, who provide policy advice to Ministers on these matters, is set out below. This letter also includes some further information on proposed amendments to the NLCS framework.

Parliament as conduit between stakeholders and Scottish Government and timing for scrutiny

- ***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?***
- ***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?***
- ***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?***

Parliamentary engagement and scrutiny are essential parts of the framework delivery process. The Scottish Government remains committed to ensuring that stakeholder engagement on all framework policy areas has taken place before they are finalised as full frameworks and that sufficient time for the development and completion of provisional frameworks to enable the Scottish Parliament to conduct its scrutiny function effectively is made available in relation to all frameworks.

I would like to reiterate the comment that Mr FitzPatrick made during his evidence session on the provisional NLCS framework, which stressed that the Committee plays a crucial role in relation to stakeholder engagement in particular.

Frameworks have had to be developed against the backdrop of an arbitrary deadline imposed by the UK Government. This was, of course, entirely unnecessary and could have been avoided had UK Ministers accepted the EU's offer of an extension to the Transition Period. While a deal regarding the UK's future relationship with the EU has now been agreed with the EU, its impact on frameworks still needs to be properly assessed. The impact of the pandemic has meant that parts of the delivery processes, which were meant to take place over several months, have had to be condensed in order to ensure that provisional frameworks were in place by the end of the Transition Period. Unfortunately, the pandemic has also impacted on how effective stakeholder engagement can take place.

Discussions between Scottish Government and Scottish Parliament officials are ongoing with the aim of finalising an agreed approach to parliamentary engagement on and scrutiny of common frameworks. I am confident that the outcome of these discussions will ensure that committees are afforded sufficient time to fulfil their scrutiny role including in relation to highlighting stakeholder concerns or issues.

As the Committee has noted, the NLCS framework was the first framework to start the formal scrutiny process. This meant that engagement with the Committee intended prior to the beginning of the formal scrutiny process and the formal scrutiny itself have taken place at the same time as the processes for parliamentary engagement and formal scrutiny are still being finalised.

As the Committee will know, summaries of most provisional frameworks have been shared with the relevant lead scrutiny committees and this is now part of the general process. Unfortunately, a formal summary of this framework was not shared with the Parliament, as the approach to be taken to the process itself had not been confirmed. Initial discussions as to how scrutiny might be undertaken for frameworks within the remit of FSS were, however, had between FSS, Scottish Government and Parliamentary officials prior to lock down in March last year.

Provisional frameworks have been agreed and are now operational for most relevant policy areas. It is important to note that the revised delivery plan, as detailed in previous letters from the Scottish Government to Scottish Parliament committees,¹ allows for further development, including stakeholder engagement and formal scrutiny and resulting amendments being made, to take place throughout this year.

As outlined in a [letter from Rosanna Cunningham to the Environment, Climate Change and Land Reform \(ECCLR\) Committee of 3 December 2020](#), several provisional frameworks have not yet concluded stakeholder engagement. The Scottish Government currently anticipates that those provisional frameworks are unlikely to be shared with legislatures for

¹ This includes letters that the Cabinet Secretary for the Constitution Europe and External Affairs sent to the Finance and Constitution Committee providing [an update on common frameworks delivery on 23 November 2020](#) and the update provided on frameworks in the [letter to the Finance and Constitution Committee containing Scottish Government's initial response to the UK Government's Internal Market White Paper on 12 August 2020](#).

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot



formal scrutiny until stakeholder engagement has taken place and, where relevant, necessary changes have been made to the frameworks. Given the Scottish Parliament and Senedd Cymru elections, and the inevitable impact this will have on the scope for parliamentary scrutiny while new committees are established, this is likely to mean that some provisional frameworks will not be scrutinised until September 2021 onwards. For those frameworks, there will, therefore, be more time for stakeholder engagement to be conducted and concluded and for further changes to be made.

My officials will, of course, be happy to provide detailed information about stakeholder engagement with committees ahead of formal scrutiny of individual frameworks commencing to help address committee's concerns regarding stakeholder engagement and framework development.

It should also be borne in mind that the review process within frameworks will provide an opportunity to consider any stakeholder feedback in terms of process. The framework is policy neutral and builds on established ways of working across government. Any future changes in the area of nutrition legislation, that is within the scope of the framework or otherwise, will be undertaken in line with well-established policy protocols and, as is currently the case, there will be full engagement with a wide range of stakeholders.

- ***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.***

I recognise the Committee's view that a more realistic timescale for consideration of the NLCS framework would have been ten weeks rather than the 28 days referred to in the Ministerial letter when the provisional framework was first shared with the Committee. Concerns raised by the Scottish Parliament regarding the 28-day period as a suggested timeframe for consideration of provisional frameworks have been taken on board and future communication regarding the scrutiny of common frameworks will no longer refer to the 28 days.

I also agree with the Committee's view that the time needed to consider a provisional framework will vary depending upon the complexity and size of the proposed policy and that a flexible approach is required. Additional factors, including whether relevant policies, for example in the form of primary or secondary legislation, have already been scrutinised and the nature and outcome of stakeholder engagement, may also influence the time needed to adequately scrutinise individual frameworks.

The Scottish Government recognises that it is up to the Scottish Parliament to determine the time that is necessary to effectively scrutinise an individual framework and is confident that ongoing discussions between Scottish Government and Scottish Parliament will resolve the issue of an agreed minimum period for consideration of provisional frameworks.

- ***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 it not the reasons why no change was made***
- ***Are there any Scotland specific policies that the framework protects, if so what are they?***

As mentioned above, Scottish Government and Scottish Parliament officials are working together to finalise various aspects of the parliamentary scrutiny process. This work is based on the steps outlined in [the Cabinet Secretary for the Constitution, Europe and External Affairs' letter to the Finance and Constitution Committee on 11 November](#). The importance of sharing information about stakeholder engagement has been addressed and the Scottish Government hopes that these discussions will result in an agreed approach shortly, which will address in full the points raised by the Committee, including what information committees should expect to have available when scrutinising provisional frameworks. This is likely to include the following:

- Information on the consultation (this may include sharing a copy of the document that was consulted on with the relevant committee(s) and/or sharing the questions that were asked) and when this consultation took place
- Information on who was consulted
- A summary of the main feedback from stakeholders
- 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
- Relevant Scotland-specific policy considerations or interests
- ***Going forward as this Framework is finalised and implemented what further consultation and engagement will stakeholders have in it?***

I currently anticipate that, once scrutiny of the framework has been completed by all four legislatures, Ministers and officials from each administration will consider what adjustments are required. We will jointly consider and agree with the other administrations how best to engage stakeholders as necessary in light of any substantive changes.

Stakeholder consultation and engagement as part of the post-implementation process is still under consideration. However, the Scottish Government's view is that stakeholder engagement and parliamentary scrutiny and monitoring should be essential elements of this process. We recognise that appropriate systems will need to be in place to ensure that there are genuine opportunities for engagement and that stakeholders have the information they need for this.

Food policy in general already contains legislative requirements for stakeholder consultations, and in the case of the NLCS policy area specifically, this will include the opportunity to comment when the newly constituted UK Nutrition and Health Claims Committee (UKNHCC) publish a scientific opinion on an application for a new nutrition and health claim.

It should be noted, however, that this framework is essentially about how officials work together in making policy and how decisions on that policy are reached. In and of itself, the NLCS framework is a policy-neutral framework. This framework formalises the liaison elements of this process across the UK to ensure that there is a joined-up approach to policy development in those areas of food law that have been repatriated from the EU.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot



St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

Looking at frameworks in silo

- ***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.***

I recognise the Committee's concern that it has been asked to consider the NLCS framework without being able to jointly scrutinise frameworks in related policy areas. As outlined above, frameworks have been developed against the backdrop of an arbitrary deadline for the end of the Transition Period and the ongoing uncertainty regarding many key cross-cutting issues.

As the Committee outlined in its letter, the NLCS framework shares a common root in food law with the Food and Feed Safety and Hygiene framework (being developed between FSS and Food Standards Agency) and the Food Composition, Standards and Labelling framework (with Defra and FSA in Northern Ireland).

Each of these frameworks have been developed in line with shared guidance and templates, and will have similar dispute resolution mechanism and set out the bespoke arrangements required to deliver the repatriated functions sitting at the heart of each of the frameworks themselves. However, the three frameworks are self-contained and the Scottish Government considers that it is not necessary for all three frameworks to undergo parliamentary scrutiny at the same time. FSS-led framework areas are essentially designed to ensure that there is a coherent four-country approach to making changes to what will become retained food law and this has been split across three frameworks, largely to reflect the departmental leads across the UK. Each will comprise a Concordat and a Framework Outline Agreement.

The Food and Feed Safety and Hygiene Framework, which was shared with the Committee on 30 November 2020, also revises an existing MoU, with FSA to set out some of the detail as to how key policy making mechanisms will work in practice between those bodies. As FSS is responsible for the provision of advice in relation to food safety, labelling and standards, any such advice coming before Ministers or the parliament in relation to matters covered within this and other framework areas, will have been considered through this broader prism.

Recent developments in EU Exit negotiations and UK legislation

- ***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?***

Whilst Northern Ireland must continue to follow EU law, the framework is intended to operate as a four-country agreement outlining our collective approach to reaching consensus in this policy area.

The Scottish Government is clear that the Internal Market Act represents a significant threat to the agreement and implementation of common frameworks, as the incentive to manage policy divergence is removed if standards set in one part of the UK must automatically be recognised in all other parts.

The Joint Ministerial Committee agreed in 2017 that frameworks will be developed to, amongst other things, enable the functioning of the UK internal market, while acknowledging policy divergence. It was also agreed that frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will, therefore, be based

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot



on established conventions and practices, and that they would as a minimum equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules.

Late amendments to the Act allow for the disapplication of the Act's market access principles to individual legislative measures in common frameworks areas, but only where there is agreement between the four administrations, and only with the consent of the UK Business Secretary. However, the framework builds upon a well-established relationship between FSA and FSS and we will continue to try to work collaboratively to mitigate the damage the Act will undoubtedly cause.

Monitoring of framework implementation and ensuring protection of public health

- ***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.***

The intention is for the framework to be formally reviewed six months, one year, and three years after implementation; and thereafter at three-yearly intervals. At each review, there will be retrospective assessment, using information collected via quarterly reports, to establish whether the framework remains fit for purpose, is achieving its stated goals, and supporting efficient administration of the relevant processes required by law; or whether it requires further revision. It is proposed that this requirement be reflected in the framework document itself further to feedback received to date.

Any review/ revision will take account of feedback received through stakeholder engagement conducted as part of the review process.

I can confirm that an annual report will be copied to interested Parliamentary Committees in each legislature. It is envisaged that the timing for the submission of the first report will be contingent on when the framework itself is formally agreed, and may depend on the outcome of wider ongoing discussions on parliamentary scrutiny between the Scottish Government and Scottish Parliament, particularly how scrutiny of frameworks as a whole is to be factored into parliamentary timetables.

- ***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.***
- ***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.***

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot



St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

The Scottish Government recognises the importance of post-implementation scrutiny and the need for appropriate systems to be in place to enable the Scottish Parliament to monitor amendments and conduct scrutiny, where appropriate. We agree with the Committee's point that there is a role for the Committee to be kept abreast of updates when material changes in Scottish procedures under this framework are proposed and that this will need to entail adequate time for engagement with legislatures and stakeholders for relevant scrutiny.

The Scottish Government appreciates the Committee's views on this and will provide a further update once discussions with the Scottish Parliament regarding an agreed approach to parliamentary scrutiny have concluded.

Proposed amendments to the framework documentation

May I also take the opportunity to summarise some of the proposed amendments to the framework documentation, further to feedback received from legislatures and stakeholders to date (some of which is covered above):

Legal/general references (in addition to general amendments to ensure consistent and correct referencing throughout):

- Text has been updated to correctly reference relevant fixing legislation associated with the framework;
- Further to correspondence from Professor Paul Haggerty, clarity has been provided in relation to framework scope particularly in relation to Dietary Reference Values. The amendments clarify that the framework is concerned with changes to what will become retained EU law for food labelling purposes (i.e. in relation to Reference Intakes and Nutrient Reference Values). Wider population-level public health advice in relation to Dietary Reference Values is unaffected by the operation of this framework.

Northern Ireland:

- The framework was drafted whilst the Northern Ireland Assembly was in suspension. Text has been updated accordingly.
- Text has been updated to reflect obligations in the Northern Ireland Protocol, but to re-iterate nevertheless that the framework commits to a four country approach in terms of policy consideration, governance and dispute resolution.

Operational elements:

- Addition of Advisory Committee Secretariat as an official observer to policy group and additional text to emphasise role and responsibility of observer status on this group.

Governance and Parliamentary Scrutiny:

- Additional text to advise that annual reports will be provided to legislatures inviting scrutiny as appropriate;
- Additional text to clarify that the purpose of reviews will be to provide a retrospective assessment to establish whether the framework remains fit for purpose; is achieving its stated goals and any policy specific process obligations in law or whether further revision is necessary.
- Additional text to make it explicit that this review process will take account of feedback from stakeholders.

Dispute resolution:

- Clarity provided in terms of final escalation step to make explicit implementation of any recommendation, where there is disagreement, will be paused pending outcome of Joint Ministerial Committee Plenary session. This confirms the position agreed at the outset, i.e. that frameworks should be developed in accordance with the principles agreed for their development in 2017, respecting the devolution settlements accordingly.

I would like to thank you for the Committee's work in relation to the scrutiny of the NLCS framework and hope the information provided in this letter is useful.

I am copying this letter to Bruce Crawford MSP, due to the Finance and Constitution Committee's overall responsibility for the scrutiny of the frameworks process.

Yours sincerely,

Mairi Gougeon