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Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-CG-0161-20

David Rees AM,
Chair of the EAAL Committee
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23 January 2020

Dear David

I would like to thank the EAAL Committee for its report 'Common policy frameworks: Assembly Scrutiny'. Common Frameworks are intended to enable shared decision making across the four governments of the UK and a transparent and cooperative approach to policy decision making in areas of devolved competence.

As mentioned in my letters of 1 March and 23 October 2019 the Welsh Government recognises the Senedd's crucial role, alongside the other three legislatures of the UK, in the scrutiny, development, implementation and oversight of future frameworks. The UK Government has similarly stated that it remains fully committed to openness and scrutiny in relation to the formation of Common Frameworks.

We wish to maintain the constructive spirit in which we have been working together, and also our commitment to transparency and the importance of scrutiny. In line with the above points about the nature of the Common Frameworks programme, in this response I have responded provisionally to several of the Committee's recommendations. This is for two reasons:

1. This is a highly complex and challenging set of objectives. The Welsh Government is committed to protecting devolved competence through the Common Frameworks programme so that policies can be developed to meet the needs of people in Wales. I also recognise the impact and connection between our policies and the policies of the other governments of the UK in these areas, as well as the connection with future international trade agreements (including with the EU). The benefit – and indeed the principal challenge – of the Frameworks programme is that it requires agreement between the four governments of the UK. Progressing Common Frameworks at a UK level to meet these evolving and various Welsh needs is an ongoing and multi-faceted challenge. Where there are areas currently under inter-governmental discussion and policy development, I have committed to provide an update by the end of March 2020.

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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.

2. The Common Frameworks programme is a discrete area of work comprising specific policy areas identified in the context of EU Exit and under the Intergovernmental Agreement which accompanied the European Union (Withdrawal) Act 2018. Good practice from the programme may inform other intergovernmental working, and is being shared on a regular basis with the separate but linked Intergovernmental Relations Review, for example. But the programme's scope is specifically defined. In this response I am referring to Common Frameworks as described in the Analysis of the Frameworks programme produced by the UK Government's Cabinet Office in April 2019 which was produced in collaboration with the other governments of the UK.

I wish to ensure that I respond clearly in relation to the Common Frameworks programme. Where the specific request around Common Frameworks is not clear to me, I have asked the Committee to provide more information on its request on Common Frameworks, to allow me to respond fully. I shall be happy to write subsequently to the committee.

I agree with many of the principles behind the Committee recommendations and I do not believe there is fundamental disagreement between us on the basic direction for the Frameworks programme. I do believe there is an opportunity for us to continue to work closely together to inform and share information on the progress of Common Frameworks and ensure timely scrutiny and discussion with legislatures as the work progresses.

Responses to the Committee's Recommendations

Recommendation 1

We recommend that, in written response to this report, the Welsh Government commits to notify the Assembly when legislation, whether to be considered by the Assembly or the UK Parliament, relates to a UK-wide common policy framework.

Response: Accept.

The government accepts the recommendation on the basis that the reference to 'UK-wide common policy framework' refers to the Common Frameworks Programme. This will be referred to as 'Common Frameworks'. The process for the agreement of Common Frameworks must be inclusive and transparent. I will ensure that it is made clear to the Senedd when legislation relates to any of the Common Frameworks under discussion between the governments of the UK.

If, however, this recommendation refers to general intergovernmental working the First Minister is considering how best to facilitate the scrutiny of intergovernmental agreements and would welcome the views of the Committee.

Financial Implications: N/A

Recommendation 2

We recommend that the Business Committee considers whether Standing Orders should be amended to require a member of the Welsh Government to notify the Assembly in the terms described in our first recommendation.

This recommendation is for the Business Committee to consider.

Recommendation 3

We recommend that the Welsh Government reviews all legislation passed in the Fifth Assembly to assess whether or not it relates to a UK-wide common policy framework area. This review should be conducted by the end of February 2020 to ensure that the Assembly has this information before the majority of frameworks are ready for scrutiny.

Response: Completed

No legislation passed in the Fifth Assembly relates to any of the Common Frameworks.

Financial Implications: N/A.

Recommendation 4

If the Welsh Government's review identifies legislation that relates to one of the framework areas currently under development, it should:

- *notify this Committee and the Constitutional and Legislative Affairs Committee in writing; and*
- *ensure that the explanatory material accompanying the eventual outline framework that is published identifies the link to this legislation.*

Response: No such references are required as no legislation has been identified in relation to the Common Frameworks.

Financial Implications: N/A.

Recommendation 5

If the Welsh Government identifies legislation that creates, or provides powers to create, a UK-wide common policy framework that falls outside the list of framework areas identified by the core frameworks programme, it should write to this Committee and the Constitutional and Legislative Affairs Committee to:

- *notify them; and*

▪ *explain how the framework will be incorporated into the frameworks programme or, in circumstances where this is not the Welsh Government's intention, the reasons for developing this framework area outside the core programme.*

Response: Accept.

The scope of the Common Frameworks programme is clearly defined in published documents. There are no plans to extend the Common Frameworks programme at this point. If this situation changes I will ensure the Committee is notified and that any proposals for extending the Frameworks programme are published.

Financial Implications: N/A.

Recommendation 6

We recommend that the Welsh Government, working with all the other governments of the UK, creates a single web-based resource that lists all the frameworks, their state of progress, and links to legislation and any non-legislative products associated with them. We recommend that this website is active by the end of February 2020 i.e. before the next cohort of frameworks are released for scrutiny.

Response: Policy in development

This recommendation relates to policy which is in development and subject to intergovernmental discussions. Any publication process would need to be agreed and observed by all four nations. I will ensure that the view of the Committee is made clear in discussions. An update on this recommendation will be provided before the 30 March recess.

Recommendation 7

We recommend that the Welsh Government commits to continuing a dialogue between Welsh Government and Assembly officials, with a view to ensuring that committees have the information they need in sufficient time to plan for the scrutiny of frameworks.

Response: Accept

Regular discussion and information sharing between the Welsh Government and Senedd officials have been a feature of the development of Common Frameworks for some time. We are committed to continuing this and indeed intensifying it if, as we anticipate, the delivery process for Frameworks programme gathers momentum over 2020.

Financial Implications: There are no new direct financial implications from accepting this recommendation.

Recommendations 8 - 10

Recommendations 8

We recommend that the Welsh Government provides, in response to this report, a written commitment to provide Assembly committees with summary outline agreements and to lay a copy of each summary outline agreement before the Assembly at the same time. Under normal circumstances this should be no less than six weeks before the associated provisional outline framework agreement is published.

Financial Implications: N/A.

Recommendation 9

The Welsh Government should lay before the Assembly all provisional outline framework agreements, together with any related implementation products such as concordats.

Financial Implications: N/A.

Recommendation 10

Alongside each provisional framework agreement, the Welsh Government should publish an explanatory memorandum that includes:

- the policy objectives of the framework;*
- the evidence to support the need for a framework in this area, including the evidence to demonstrate adherence to each of the framework principles;*
- a summary of the consultation process and responses received;*
- any unresolved differences in the positions expressed by the other parties to the agreement and how these differences are to be resolved;*
- governance arrangements, including the dispute resolution process and review mechanism;*
- a devolution impact assessment i.e. the extent to which this framework agreement constrains executive competence and the extent to which the constraints imposed by the framework agreement compare to those that exist under current EU frameworks;*
- a legislative impact assessment i.e. what legislation, passed or proposed, is associated with this framework (e.g. retained EU law, other SIs, primary legislation) and any issues of legislative consent;*
- a financial impact assessment; and*
- a post agreement implementation plan (to include a review process with defined timescales and indicators to demonstrate adherence to the framework principles).*

Financial Implications: N/A

Response to Recommendation 8-10: Policy in development

These recommendations relate to policy which is in development and subject to intergovernmental discussions and would need to be agreed and observed by all four nations. I will make sure that the view of the Committee is made clear in the discussions. An update on these recommendations will be provided before the 30 March recess.

Recommendation 11

We recommend that the Business Committee considers whether it might wish to perform the role we suggest in terms of coordinating committee scrutiny of provisional outline framework agreements.

This recommendation is for the Business Committee to consider.

Recommendation 12

We recommend that the Welsh Government, in written response to this report, commits to enabling the role for the Business Committee we have described in this report, should the Business Committee wish to undertake such a role.

This recommendation is for the Business Committee to consider and the Welsh Government will of course engage with any requests the Business Committee may make.

Recommendation 13

We recommend that the Welsh Government, in written response to this report, commits to not enter into a framework agreement until a committee reports on a provisional outline framework agreement or a deadline for reporting set by the Business Committee has passed.

Response: Accept in principle

Common Frameworks will only be finalised after they have passed through a scrutiny process, of which Committee reports will be a fundamental part. I will share the details of the scrutiny process agreed by UK, Welsh, Scottish and Northern Irish Ministers with the Committee as soon as possible. This will help us jointly develop a form of scrutiny appropriate to the issues the Framework programme presents to Wales.

Financial Implications: N/A

Recommendation 14

In circumstances where a committee has reported within a deadline set by the Business Committee, we recommend that, in written response to this report, the Welsh Government commits to:

- *respond in writing to any representations made by an Assembly committee; and,*
- *in keeping with normal committee reporting arrangements, allow time for a debate on the committee's report in Plenary before proceeding to make a framework agreement.*

Response: Accept in principle

The detail of the Common Frameworks scrutiny procedure has yet to be finalised by the four administrations of the UK I will make sure that the view of the Committee is made clear in discussions. I will write to the Committee as soon as these scrutiny procedures have been agreed and update no later than 30 March.

Financial Implications: N/A

Recommendation 15

We recommend that the final framework agreement and any associated implementing products are laid before the Assembly once signed.

Response: Accept

The government accepts the recommendation on the basis that the reference to 'framework' refers to the Common Frameworks Programme. Final Framework agreements and any associated implementing products will be laid before the Senedd as part of the standard process for agreeing Common Frameworks.

Financial Implications: There are no new direct financial implications from accepting this recommendation.

Recommendation 16

We recommend that the Welsh Government lays a report before the Assembly, at least annually, that provides an assessment of the functioning of each framework according to the post agreement implementation plan we have called for in recommendation 10 to this report.

Response: Accept

The government accepts the recommendation on the basis that the reference to 'framework' refers to the Common Frameworks Programme. The Welsh Government will lay a report before the Senedd at least annually, which provides an assessment of the functioning of each Common Framework. This will be part of the annual report laid under the inter-institutional relations agreement between the Welsh Government and the Senedd. The content of the report will be subject to further discussions within the Common Frameworks programme and with the four legislatures of the UK, as per our response to Recommendation 10.

Financial Implications: There are no new direct financial implications from accepting this recommendation.

Recommendation 17

We recommend that the Welsh Government lays a written statement before the Assembly whenever:

- *a change to a framework is proposed by any party to the framework agreement;*
- *a change is made to any framework agreement;*
- *a dispute arises in relation to the implementation of a framework; or*
- *when formal dispute resolution mechanisms are triggered.*

Response: Policy in development

This recommendation relates to policy which is in development and subject to intergovernmental discussions. Any publication process would need to be agreed and observed by all four nations. I will ensure that the view of the Committee is made clear in discussions. An update on this recommendation will be provided before the 30 March recess.

Financial Implications: N/A

Recommendation 18

We recommend that the Llywydd considers discussing this report with the Chairs' Forum in the first instance, and the question of whether to establish an inter-institutional agreement to underpin the scrutiny proposal made in this report.

This recommendation is for the Llywydd to consider.

Recommendation 19

We recommend that the Business Committee considers our suggested approach to scrutiny (as described in this report) with a view to determining whether or not it would consider it appropriate to seek changes to Standing Orders to strengthen the scrutiny process in the future.

This recommendation is for the Business Committee to consider.

Recommendation 20

We recommend that the Welsh Government considers the case for reconfiguring the intergovernmental approach to the frameworks programme to ensure:

- *it is considered in the overarching context of work to agree a shared definition of the UK internal market; and*
- *that legislative and non-legislative action that could be considered as creating a UK-wide framework is incorporated into this programme of work.*

Response: Policy in development

On the first bullet, the intergovernmental work on the internal market progresses separately from the Common Frameworks programme. The linkages with the Common Frameworks programme are being developed in line with the Common Frameworks principles.

On the second bullet, I refer the Committee to my answer to Recommendation 5. The Common Frameworks programme is a discrete area of work arising from the UK's exit from the European Union and is distinct from other types of intergovernmental agreement.

An update on this recommendation will be provided before the 30 March recess.

Financial Implications: N/A

A handwritten signature in black ink, appearing to read 'JM', with a stylized flourish at the end.

Jeremy Miles AM

Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister