



The Scottish Parliament
Pàrlamaid na h-Alba

Màiri McAllan MSP
Minister for Environment and Land
Reform
Scottish Government

By email only

**Net Zero, Energy and Transport
Committee**

c/o Clerk to the Committee
Room T3.40
The Scottish Parliament
Edinburgh
EH99 1SP

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16 November 2022

Dear Minister,

Provisional Environmental Common Frameworks

Previously, you wrote to the Committee to share the draft text of these five provisional Common Frameworks that fall within our remit, and to seek our views on them—

- [Radioactive Substances](#)
- [Air Quality](#)
- [Best Available Techniques/ Industrial Emissions \(BAT\)](#)
- [Ozone Depleting Substances and F-gases](#)
- [Chemicals and Pesticides](#)

The Committee has undertaken scrutiny of the above frameworks. This has included issuing a [call for written views from 20 April to 2 June 2022](#) and received six responses. We also wrote to counterpart committees in other parts of the UK to ask what work they have carried out regarding Common Frameworks.

On 25 October 2022, we also held an [evidence session with Environmental Standards Scotland, Scottish Environment Protection Agency \(SEPA\) and NatureScot](#) in which we heard their views on the content and development of Common Frameworks. The Committee would like to put on record our thanks to all stakeholders who provided evidence to aid our consideration of this matter.

I am now pleased to present our recommendations, which are set out in detail in the Annex.

The Committee recommends for the Scottish Government to work with the UK Government to provide clearer guidance for how Common

Frameworks will operate within the current regulatory landscape in Scotland, particularly with regards to its interaction with the UK Internal Market Act 2020, devolved competence, international trade treaties and the role of environmental oversight and enforcement bodies.

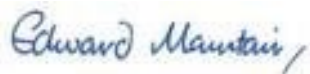
The Committee recommends that the Scottish Government keeps it informed of any significant developments with regards to the five Common Frameworks within its remit, such as instances of disputes arising between UK nations, or agreements signed between parties which allow for policy divergence.

The Committee ask the Scottish Government to work with other administrations to ensure language used in the finalised Frameworks is as plain and jargon-free as possible. This will help stakeholders feel more invested in Frameworks and better able to understand how they work.

As can be seen, observations from stakeholders were overwhelmingly about the general context in which they would wish Frameworks to operate, rather than on the detailed content of draft Frameworks.

We hope our findings will help to inform the Scottish Government in its ongoing work with other UK administrations to find common understandings and ways of working on environmental matters in the post-Brexit landscape.

Yours sincerely,

A handwritten signature in blue ink that reads "Edward Mountain".

Edward Mountain MSP
Convener
Net Zero, Energy and Transport Committee

Annexe

General views on Common Frameworks

Stakeholders were supportive of the principle of UK administrations committing to Common Frameworks as a mechanism to deliver and maintain a coherent approach to environmental regulations post EU-exit. There were a number of reasons for why stakeholders held a positive view towards Common Frameworks, such as being necessary to avoid the adverse effects of a fragmentation in standards across the UK¹, support non-regression in environmental protections² and preventing harmful gaps in environmental legislation and governance following Brexit.³

In addition, stakeholders were encouraged by the collaboration and joint-working which was undertaken between all four nations when drafting the Common Frameworks and hoped the spirit of consensus, cooperation and respect for devolved settlements in which they were built on will continue.⁴

Intergovernmental Relations

The Committee notes that when the four nations of the UK agreed a concordat at the [Joint Ministerial Committee \(European Negotiations\) in October 2017](#) in relation to developing Common Frameworks, they signed up to principles of mutual agreement and respect for devolved competence.⁵

This co-operative approach was welcomed by stakeholders. However, stakeholders also highlighted concerns relating to the current machinery for intergovernmental relations and whether it was capable of handling disputes on Common Frameworks arising between the four nations⁶. National Farmers Union of Scotland stated the informal machinery was not robust and too heavily reliant on informal negotiations and as such heavily dependent on the goodwill of all four nations to find consensus on a common approach.⁷ Similarly, Royal Town Planning Institute Scotland said informal decision-making processes taken wholly at official level may lack appropriate levels of transparency.⁸

Instead, some stakeholders suggested a more formal approach to IGR arrangements for Common Frameworks would be the most effective approach to dispute resolution and joint decision-making, including the implementation of legally binding agreements between nations⁹.

¹ Written submissions to call for views from [UKELA](#) and Law Society of Scotland.

² Written submission to call for views from [UKELA](#) and [RTPI Scotland](#).

³ National Farmers Union of Scotland. Written submissions to call for views.

⁴ Written submission to call for views from [UKELA](#), [NFUS](#), [RTPI Scotland](#) and Law Society of Scotland.

⁵ Joint Ministerial Committee (2017). [Joint Ministerial Committee \(EU Negotiations\) communiqué: 16 October 2017](#).

⁶ Written submissions to call for views from [UKELA](#), [NFUS](#) and [RTPI Scotland](#).

⁷ NFUS. [Written submission to call for views](#).

⁸ Royal Town Planning Institute Scotland. [Written submission to call for views](#).

⁹ Written submission to call for views from [NFUS](#) and [RTPI Scotland](#).

Devolution and Policy Divergence

The aim of common frameworks is to manage divergence in devolved policy areas formerly governed by EU law. In doing so, it is important to strike a balance between ensuring flexibility for tailoring policies to the specific needs of each territory with the need for common UK approaches to regulation. This is recognised in the general principles outlined in the Joint Ministerial Committee (European Negotiations) in October 2017¹⁰. However, stakeholders were concerned about a lack of clarity as to what level of policy divergence would be allowed within the context of each Common Framework.¹¹

Therefore, more details are required to set out the measures for assessing the level of acceptability on policy divergence within each Common Framework as well as the practical ways to manage policy divergence through intergovernmental structures to avoid negative impacts on legislation and policy development.

For example, RTPI Scotland told us—

“To understand how potential divergences may be considered, clarity from Scottish Government on future policy approaches to air quality, including expected divergences, will enable clearer scrutiny or ‘stress testing’ of the proposed Framework in this regard”.¹²

Furthermore, it is not entirely clear how policy divergence, and indeed Common Frameworks more broadly, will operate within the context of the UK Internal Market Act 2020 and the new role of the Office for the Internal Market.¹³ In its written submission to the Committee, [Environmental Standards Scotland](#) noted its concerns that the 2020 Act could limit the Scottish Government’s ability to introduce new regulations to keep pace with EU standards where they relate to areas in which the UK Government have taken a different approach.¹⁴

As a result, stakeholders called for more guidance to be provided by the UK Government with regards to how it sees Common Frameworks and the UK Internal Market Act 2020 interacting in practice¹⁵, as well how it intends this system to operate within the devolved settlement in Scotland.¹⁶

Parliamentary Scrutiny

Delivering adequate public participation in relation to policy formulation on Common Frameworks is an essential component of ensuring the UK meets its

¹⁰ [Joint Ministerial Committee \(2017\). Joint Ministerial Committee \(EU Negotiations\) communiqué: 16 October 2017.](#)

¹¹ Written submission to call for views from [UKELA](#), [NFUS](#) and [RTPI Scotland](#).

¹² RTPI Scotland. [Written submission to call for views.](#)

¹³ Written submissions to call for views from [UKELA](#), [NFUS](#), [Law Society of Scotland](#),

¹⁴ Environmental Standards Scotland. Written submission. Paragraph 4.

¹⁵ Written submission to call for views from [UKELA](#), [NFUS](#) and [Law Society of Scotland](#).

¹⁶ Written submission to call for views from [UKELA](#) and [Law Society of Scotland](#).

international obligations [under articles 7 and 8 of the Aarhus Convention](#)¹⁷ and the obligations on Transparency and Good Regulatory Practices and Regulatory Cooperation under the [EU-UK Trade and Cooperation Agreement](#).¹⁸

Stakeholders were clear that for transparency and accountability in relation to the decision making around Common Frameworks, the Scottish Parliament and other legislatures across the UK must have an active role in scrutinising developments in this area, particularly in instances of policy divergence or disputes between UK nations.¹⁹

However, the Committee heard concerns from stakeholders that the process for parliamentary scrutiny of Common Frameworks was not yet fully established and called for more details to be provided on how decisions will be examined and how scrutiny will take place on a UK-wide basis across all devolved legislatures.²⁰

Stakeholders also called on the Scottish Government to clearly set out what the role environmental oversight and enforcement bodies such as Environmental Standards Scotland will have in scrutinising decisions relating to Common Frameworks when these overlap with its role on environmental law and protections.²¹

Stakeholder Engagement

Stakeholders noted the strong necessity for extensive stakeholder engagement in order to ensure Common Frameworks had a substantial evidence-base for structures to operate effectively.²²

In general, stakeholders welcomed the opportunity for on-going stakeholder engagement through the review mechanism which states any party to the Framework may ask a third party to provide advice at any stage in the process.²³ These include other government departments or bodies as well as external stakeholders such as NGOs and interest groups.

At our evidence session with Scotland's environmental regulators on 25 October, the Scottish Environment Protection Agency welcomed the approach taken to stakeholder engagement on Common Frameworks and noted the agency had been supporting the Scottish Government with advice on the Common Frameworks for best available techniques, radioactive substances or emissions trading.²⁴

Furthermore, the agency also confirmed it had been actively involved in the development of Common Frameworks, including being a core member of the

¹⁷ [UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters \(Aarhus Convention\), Articles 7 and 8.](#)

¹⁸ [EU-UK Trade and Cooperation Agreement, Part 2, Title X.](#)

¹⁹ Written submission to call for views from [NFUS](#) and [RTPI Scotland](#).

²⁰ Written submission to call for views from [UKELA](#), [NFUS](#) and [RTPI Scotland](#).

²¹ Written submission to call for views from [UKELA](#), [RTPI Scotland](#) and [Law Society of Scotland](#).

²² Written submission to call for views from [NFUS](#), [RTPI Scotland](#) and [Law Society of Scotland](#).

²³ Written submissions to call for views from [NFUS](#), [RTPI Scotland](#) and [Law Society of Scotland](#).

²⁴ Net Zero, Energy and Transport Committee. [Official Report, 25 October 2022](#), col 5.

radioactive substances policy group, which reviews issues relating to policy, strategies, legislation and regulatory standards on radioactive substances.²⁵

However, the Committee has also heard concerns that there was insufficient detail on how stakeholder engagement will operate in practice.²⁶ In addition, stakeholders also saw the technical language and terminology used in the Common Frameworks as a barrier to engagement and asked for wording in the finalised versions to use plain English and avoid using technical jargon wherever possible.²⁷

²⁵ Net Zero, Energy and Transport Committee. [Official Report, 25 October 2022](#), col 12.

²⁶ Written submission to call for views from [NFUS](#) and [RTPI Scotland](#).

²⁷ RTPI Scotland. [Written submission to call for views](#).