

Scrutiny of frameworks: Previous questions from Senedd Committees

What the framework is

1. What form does the framework take, i.e. is it a Memorandum of Understanding, a concordat, a legislative framework or a combination of documents?

The Food and Feed Safety and Hygiene Framework will be set out in the following documents :

- A non-legislative Concordat signed by Ministers in the four nations of the UK
- the existing Memorandum of Understanding between the Food Standards Agency (FSA) and Food Standards Scotland (FSS), which has been updated to reflect the Framework

The full detail of the framework is also documented in the Framework Outline Agreement.

2. On what basis has the form for the framework been chosen?

An assessment to determine the best form for the Framework concluded that a legislative underpinning would not be needed.

Adopting a non-legislative approach allows for maximum flexibility to adapt the framework as necessary and maintains a degree of trust and goodwill between the four administrations.

The non-legislative Framework documents will provide the basis for four nation cooperation to develop approaches to food and feed safety and hygiene and maintaining commonality in approach where appropriate.

3. Have all relevant framework documents (including documents that will be used by governments to apply and interpret the framework) been published?

The framework has been provided to Ministers in all four countries and has received provisional agreement. It has now been provided at this stage to Committees in each of the four countries for scrutiny. It has not yet been published for full public access. This will follow the final Ministerial agreement that will take place after Committee scrutiny.

4. Will the framework require any further legislation in future?

The arrangements within this agreement rely on a non-legislative Concordat and as such do not require additional legislation. This Framework sets out general provisions in relation to the policy. It is not intended to constitute a legally enforceable contract or create any rights or obligations which are legally enforceable.

5. What impact will the form chosen have on the framework's operation?

The Concordat sets out high level commitments and ways of working to which Ministers in all four nations commit, while the revised MoU between FSA and FSS sets out the operational detail of working arrangements among officials across the UK.

This will allow sufficient flexibility for reviewing and amending official level processes as required once the Framework is implemented

6. How have the governments ensured the framework will be clear and accessible for citizens and Members?

The documents that make up the framework have been reviewed by senior officials in all four countries and have received provisional agreement from Ministers. Along with scrutiny by Committee, this should ensure clarity and accessibility.

What the framework does

7. Why is a framework needed for this policy area?

All UK policy teams agreed a framework was desirable to help ensure the functioning of the UK internal market, while acknowledging policy divergence; and to ensure any future trade arrangements can be done on a UK basis and was developed in line with the common frameworks principles agreed at JMC(EN) in the Committee's communique of 16 October 2017

8. The Joint Ministerial Committee agreed principles for when frameworks would be necessary in 2017, including enabling the functioning of the UK internal market and ensuring compliance with international obligations. Which of these principles apply to this framework?

The Framework has been developed to be in line with all of the JMC (EN) principles

9. What does EU law and policy in this area currently do? Does the framework replicate this/these function(s) in full or in part?

FFSH policy is governed by harmonised EU derived legislation. The EU Regulations are directly applicable across the whole of the UK. Powers for enforcement are provided by domestic legislation in each of the four UK nations. Applicable Directives have been implemented through domestic legislation in each of the four UK nations.

FFSH can be broken down into four broad policy areas, all of which fall within devolved competence and were formerly largely harmonised at EU level and have been transferred onto the UK statute book as retained EU law. The exception to this was the limited scope provided for the adoption of national measures to achieve common outcomes where these are in-keeping with the principle of subsidiarity. The four broad policy areas within the scope of EU FFSH legislation are:

- general food law and hygiene
- food safety standards
- official controls for food and feed
- public health controls on imported food

10. What are the policy objectives of the framework?

The Framework sets out how the governments of the four nations will work together to develop policy, and aims to ensure that, where appropriate, common rules can be developed, and where this is not appropriate, there are mechanisms for four nation discussion. The Framework also delivers on the strategic objectives of both food safety bodies.

The Framework puts in place policy development and decision-making processes in a UK/GB context in order to replace those currently undertaken at an EU level. It was developed in order to reflect existing EU policy flexibilities (in terms of scope) and does not introduce any new obligations or requirements.

11. In what ways does the framework change the Welsh Government's executive competence? How is this different from the position under EU law?

Responsibilities, powers, and or functions currently held by Member States or EU bodies will be transferred to Welsh Ministers in all areas of FFSH where there is currently devolved competence.

12. In what ways does the framework change the Senedd's legislative competence? How is this different from the position under EU law?

The Senedd will retain its current level of scrutiny of changes made to domestic legislation, whether by affirmative or negative procedure.

13. What scope for divergence will the framework allow? Is this wider or narrower than the scope for divergence under EU law?

The Framework puts in place processes for managing divergence (where the outcomes of joint risk analysis demonstrate that it is appropriate). Each of the four UK nations will continue to make domestic legislation as they currently do under EU rules. Existing areas of flexibility for different approaches will be maintained.

14. If the scope for divergence is different from the scope for divergence under EU law, why is that?

See above (Q13).

15. Will the framework have any impact on existing or planned Welsh legislation and/or policies?

No direct impact on current policies or legislation is envisaged as a result of the operation of the framework.

16. What will the financial implications of the framework be?

The framework in itself will not impose any specific financial burdens.

The operation of the dispute mechanisms will involve the time of officials and, in exceptional circumstances, Ministers, but discussions on implementing EU Regulations between the four countries of the UK already happens in most areas, so the cost to FSA and FSS budgets in operation of the framework will be largely offset by the continuation of existing less formal cooperation.

The operation of functions currently carried out by EU bodies, including risk assessment and risk management will have an impact as these functions will need to be carried out by the appropriate UK or Welsh bodies, but this would be the case whether or not the operation of such functions were covered by a common framework.

How the framework was developed

17. How did the governments engage with stakeholders in preparing the outline framework?

An online engagement event was held with representation from the food industry, including representation from Wales. Attendees were provided with a copy of the draft framework outline and were invited to comment.

18. As part of that process, how did the Welsh Government itself engage with stakeholders?

FSA has policy competence in this area, and its officials had direct involvement in the planning and delivery of the stakeholder engagement and was represented by officials at the event itself.

19. How does the framework reflect the responses of stakeholders, including stakeholders in Wales?

Stakeholders were supportive of the purpose and principles of the framework. Stakeholders advised that they also felt reassured by the proposals for joint decision making and dispute resolution mechanisms.

20. Are there any ongoing negotiations in relation to any elements of the framework?

Reference to international obligations is still under consideration. WG has provided alternative wording to that currently in the concordat - this is agreeable to policy departments across the UK but has not been agreed by Cabinet Office.

There will be interaction between the framework and the UK Internal Market Bill, which is not yet finalised. This interaction is detailed at Q31 below.

Interaction with domestic law and policy

21. How does the framework interact with existing domestic legislation?

FFSH policy is governed by harmonised EU derived legislation. The EU Regulations are directly applicable across the whole of the UK. Powers for enforcement are provided by domestic legislation in each of the four UK nations. Applicable Directives have been implemented through domestic legislation in each of the four UK nations.

While FFSH policy is an area of devolved competence, in accordance with the devolution settlements (Scotland Act 1998, Wales Act 2006 and Northern Ireland Act 1998), negotiation of international trade agreements remains reserved. This creates an area of overlapping interests where the negotiation of trade agreements may intersect with aspects of devolved policy areas

22. How does the framework interact with retained EU law in this policy area?

The framework sets out new mechanisms and processes put in place to replace those previously set out and delivered by the EU.

23. Does the framework interact with any existing intergovernmental agreements?

Lead competence for FFSH policy is held by FSA in Wales, England and Northern Ireland, and by FSS in Scotland. An existing Memorandum of Understanding operates on the interaction at official level between FSA and FSS. This MoU will be revised to reflect the operation of the framework. The framework will be reviewed against any outcomes from the intergovernmental relations review once these are available.

Interaction with international law and international agreements

24. Does the framework interact with any existing international obligations or agreements?

It is not thought that the FFSH framework interacts with existing international obligations or agreements, but ongoing discussions with Cabinet Office are intended to resolve on an agreed wording of specific sections in relation to international policy

25. If so, does the framework 'ensure compliance with international obligations'? How?

See above (Q24)

26. How will the framework interact with or be impacted by any future UK negotiations on trade or in other areas?

See above (Q24)

27. How does the framework interact with the Ireland and Northern Ireland Protocol?

Northern Ireland will continue to follow EU FFSH law at the end of the transition period. However, Northern Ireland will continue to participate fully in policy development under the framework. Issues will continue to be considered on a four-country basis: officials and Ministers in Northern Ireland will continue to have the opportunity to be involved in policy development and discussions to resolve disputes.

Areas where provisions have been made for NI include: how potential policy changes will be discussed (subsection 5.7); how risk management decisions will be implemented (5.9); how businesses will apply for pre-market approvals and reauthorisations (5.17) and how discussions regarding divergence will take place (5.18) and how disputes will be managed (12.19).

28. What would happen if the framework conflicted with an international agreement?

The Framework sets out, through non-legislative agreements, mechanisms for developing and agreeing FFSH policy and as such cannot conflict with international agreements.

29. If the framework needs to be amended to reflect a new international agreement, what revision process will be engaged?

This framework will follow the procedures for review and revision of all common frameworks. This process will be devised centrally.

30. How will the Senedd be able to contribute to that revision process?

This framework will follow the procedures for review and revision of all common frameworks. This process will be devised centrally.

Interaction with the Internal Market Bill

31. What impact would the UK Government's Internal Market Bill (i.e. to enshrine in law the principles of mutual recognition and non-discrimination) have on the framework?

The UK Internal Market Bill will be based on the principles of mutual recognition and non-discrimination and will to goods, including food. These principles will act alongside the Framework to ensure the effective functioning of the UK Internal Market where these standards differ.

Operation

32. What will the roles of the different governments in the operation of the framework be?

All Governments across the UK will have equal roles in the delivery of the framework. Policy teams will work together to develop approaches for changes to FFSH policy within scope of this framework and agree common recommendations. Where consensus cannot be reached at official level regarding a common recommendation (whether that is agreement to a UK wide approach or to diverge) the dispute resolution process would be triggered and Minister's involved as necessary.

33. Will any other bodies, public or otherwise, be involved in the operation of the framework?

Food Standards Agency and Food Standards Scotland will oversee the official level operation of the framework

Governance and dispute resolution

34. What will the roles of the governments be in the oversight and governance of the framework?

A detailed governance and dispute resolution structure is set out in the framework.

Governance arrangements at a Ministerial level will be subject to approaches agreed under the Inter-governmental Review which is currently underway

35. What will the roles of any other bodies be in the oversight and governance of the framework?

FSA and FFS will maintain day-to-day governance of the framework

36. What is the dispute resolution mechanism for the framework? How does it compare to dispute resolution mechanisms in other frameworks?

A detailed dispute resolution mechanism is included in the Framework outline

37. Do you consider the dispute resolution mechanism to be robust enough for its intended purpose?

Yes

Review and revision

38. What arrangements for regular review and revision of the framework will there be?

After implementation, a review and amendment mechanism will ensure that the framework can adapt to subsequent policy developments. This periodic review is designed to focus on the governance structures and operational aspects of a framework and should take place every 3 years at a minimum.

An annual review of the FSA-FSS MoU will be carried out and a joint annual framework report produced by FSA and FSS officials under the governance arrangements the framework sets out.

39. How will continued adherence to the framework principles be measured?

Adherence will be considered as part of the framework's governance processes.

40. How will the Senedd be able to contribute to the review and revision process for the framework?

This framework will follow the procedures for review and revision of all common frameworks. This process will be devised centrally.

41. How will stakeholders be able to contribute to the review and revision process for the framework?

This framework will follow the procedures for review and revision of all common frameworks. This process will be devised centrally.

42. What is the process for discussing and agreeing any future changes to the framework?

Officials across the UK will formally review both the framework and concordat six months, one year, and three years after implementation; and thereafter at three-yearly intervals from the end of the transition period.

43. If changes are made in future, how will the Senedd be notified? What scrutiny procedures will apply to the changes?

This framework will follow the procedures for review and revision of all common frameworks. This process will be devised centrally.