



HOUSE OF LORDS

Common Frameworks Scrutiny Committee

House of Lords

London

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30 March 2023

Grant Shapps MP
Secretary of State for Energy Security and Net Zero
Department for Energy Security and Net Zero
1 Victoria Street
London SW1E 5JD

Dear Grant Shapps MP,

UK Emissions Trading Scheme (ETS) Common Framework

Thank you for this Framework on the UK ETS which was published in February 2023. We considered the provisional Framework at our meeting on 28 March 2023 and our final recommendations are set out below. We are deeply disappointed by the quality and accuracy of this Framework and find the omissions and inconsistencies concerning. We note the statement in the Government's response to our July 2022 report that the "work that goes into developing Common Frameworks, and the agreements that we reach, help to foster an environment of mutual respect and collaboration." In our view, this Framework does not reflect these stated values and we are concerned at the lack of attention given to intergovernmental relations in this important policy area. This marks a significant change in tone and decrease in momentum since our previous correspondence on this Framework with the then Minister for Business, Energy and Clean Growth, Rt Hon Kwasi Kwarteng MP. We are copying this letter to the Leader and Shadow Leader of the House of Lords to bring our concerns to their attention. We urge you to address the problems we have identified with this Framework as a matter of urgency.

Policy matters that are out of scope of the Framework

We note that arrangements to link the UK ETS with the EU ETS are outside the scope of the Framework. In previous correspondence, the Government has argued that this is because this is a reserved matter. Nevertheless, given the fact that Northern Ireland remains partly aligned to the EU ETS due to the Northern Ireland Protocol, it would follow that this crucial policy matter should lie firmly in scope of this Common Framework.

- Q1. Please could you explain the rationale for the Government's decision on this matter?
Is there a mechanism for the Devolved Administrations to formally request a change in scope to Common Frameworks in instances of this nature?

The UK Registry

We note that the Environment Agency is fulfilling the role of maintaining the UK Registry on a UK-wide basis “whilst the market is established.”

Q2. How has this been working in practice and are there any plans to change these arrangements?

Drafting

We note the Government’s commitment (outlined in its response to our July 2022 report) to improving the quality and consistency of Common Frameworks, we are deeply disappointed at the drafting errors in the ETS Framework. There are multiple sections in the Framework that refer to the EU ETS rather than the UK ETS (such as the section on international obligations) in addition, the Framework is in parts focused on the ETS scheme in and of itself rather than the ETS Common Framework.

R1. We recommend that the above drafting points are actioned at the Department’s earliest opportunity and that the Committee is formally notified when this has been completed. We reiterate the importance of having a centralised quality assurance process to rectify errors of this nature.

Q3. Please could you outline what steps you will be taking to ensure that this does not happen again.

Legal framework

Annex A includes insufficient information and is poorly presented.

R2. We recommend that Annex A be updated to include a comprehensive and up to date breakdown of all legislation, including any devolved legislation and retained EU law that is within the scope of the Framework as a matter of urgency, and formally notify the Committee when this has been done.

International obligations

The text in this section frequently refers to the EU ETS rather than the UK ETS. The text also states that “The UK is a party to the above international obligations and therefore a Common Framework in this area will help to honour these obligations.”

R3. We recommend that the Framework text in this section be updated to focus on the international obligations that are relevant to the UK ETS. We also recommend that this text be updated to provide sufficient detail about how the Framework will enable the UK to meet the international obligations that are within its scope without delay.

Q4. According to the Framework, “Kyoto Protocol units are no longer linked to the UK ETS scheme.” Can you confirm that this is correct?

According to the Framework, arrangements relating to CORSIA are out of scope. However, we note that “there may be instances where changes to UK ETS secondary legislation as a result of CORSIA need to be considered through UK ETS governance arrangements.” The Framework states that “DfT is the UK Government Department responsible for this policy” and “amendments to the UK ETS are expected to be required” in order to implement CORSIA.

Q5. Can you please clarify why CORSIA is out of scope of this Common Framework and whether there is any likelihood that this will change.

UK-EU Trade and Cooperation Agreement (TCA)

We note that the policy area covered by this Common Framework intersects with the EU-UK Trade and Cooperation Agreement (TCA) and therefore topics relevant to the Framework may be considered from time to time by relevant TCA Specialised Committees or the Partnership Council.

Q6. Can you please confirm that representatives from the Devolved Administrations have had the opportunity to attend TCA Partnership council and relevant Specialised Committee meetings in the past two years? What plans are there to secure their attendance at future meetings?

Interaction with other frameworks

It is unclear whether the ETS Framework interacts with other frameworks as there is no detail included on this in the Framework.

Q7. Can you please clarify whether there are any interactions between this Framework and other frameworks?

Governance

At some points in the Framework, it is unclear which structures relate to the ETS Common Framework and which are designed for the functioning of the UK ETS.

R4. We recommend that the Framework be updated to ensure that the governance processes that relate to the UK ETS Common Framework are distinguishable from the governance processes that relate to the UK ETS as a whole.

The Framework states that “arrangements for both the Working Group and the Board will be captured in the UK ETS Authority Terms of Reference document to be agreed by the four governments, and how they will broadly operate is set out in section 8 of the [Framework Outline Agreement].” However, no section 8 is included in the Framework.

Q8. Please could you clarify why section 8 has not been published?

R5. We recommend that the Framework be updated to include this section and all relevant sections that may be missing without delay.

We note that the UK ETS governance structure is amalgamated with the UK ETS Common Framework governance.

Q9. How are these structures operating in practice and how much resource is allocated to ensure that issues relating to the Common Framework are addressed?

The framework does not include details on timescales for the dispute resolution process.

R6. We recommend that the framework be updated to include this information.

Stakeholder engagement

We were disappointed and surprised not to see any details on stakeholder engagement in this Framework.

Q10. Please could you set out what, if any, stakeholder engagement took place during the development of this Framework?

R7. We recommend that the Framework be updated to include detail on the stakeholder engagement within 4 weeks.

The Retained EU Law (Revocation and Reform) Bill

We note that 65 pieces of Retained EU Law relating to the EU ETS were transposed under the *European Union (Withdrawal) Act 2018* and are listed on the REUL Dashboard. We were therefore surprised that no REUL is referred to in the Framework.

Q11. Who made the decision not to include any REUL in the framework, and why was this decision made?

R8. We recommend that you clarify which REUL is required for the continued functioning of the Common Framework.

R9. We recommend that you set out how you intend to handle this REUL (under the terms of the *Retained EU Law (Revocation and Reform) Bill*) as a matter of urgency.

R10. We recommend that the Framework be updated to specify the REUL that is in scope.

We also note that one piece of EU-derived domestic secondary legislation was preserved under s. 2 of the 2018 Act to enable Northern Ireland to participate in the EU ETS.

Q12. Do you plan to retain this piece of legislation?

R11. We recommend that your plans for this piece of legislation are set out as a matter of urgency before the report stage of Retained EU Law Bill, due to begin on 19 April.

UK Internal Market Act (UKIM)

It is unclear whether this framework interacts with the UK Internal Market Act 2020, and we are disappointed no information about this included in the Framework.

Q13. Please could you clarify whether carbon emissions traded via the ETS constitute goods or whether the ETS provides a service?

R12. We recommend that the Framework be updated to clarify this within 4 weeks.

Future Accountability

We note that the UK ETS has review points that are set out in legislation, the Framework also states that this includes “regular reporting to [the four] legislatures and responding to any scrutiny initiated by [the four] legislatures. While this is encouraging to see, it is not clear whether these reporting requirements will include reporting on the operation of the Framework itself.

Q14. Please could you clarify whether the operation of the UK ETS Common Framework will be included in these reporting exercises?

R13. We recommend that the Framework be updated to specify the parameters of these reviews and their relation to the operation of the Common Framework.

We require response to this letter by 13 April 2023.

I am copying this letter to *Mick Antoniw MS, Counsel General and Minister for the Constitution in the Welsh Government; Angus Robertson MSP, Cabinet Secretary for the Constitution, External Affairs, and Culture in the Scottish Government; Katrina Godfrey, Permanent Secretary to the Department for Agriculture, Environment, and Rural Affairs of Northern Ireland; the Rt Hon Lord True, Leader of the House, Rt Hon Baroness Smith of Basildon, the Shadow Leader of the House of Lords; and Rt Hon Michael Gove MP, Minister for Intergovernmental Relations*

Yours sincerely,

Baroness Andrews,

Chair of the Common Frameworks Scrutiny Committee