



Department for  
Energy Security  
& Net Zero

**Rt Hon Graham Stuart MP**  
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The Baroness Andrews OBE  
Common Frameworks Scrutiny Committee, Chair  
House of Lords  
London  
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Dear Baroness Andrews,

Thank you for your letter dated 30 March 2023 regarding the UK ETS Common Framework. I am grateful for your diligent and thorough work in reviewing this document. Having reviewed your questions and recommendations, I enclose responses to your questions including provisional proposals to make some minor amendments. With these minor changes, the document will meet the necessary high standards expected for Common Frameworks.

I believe that the UK ETS Common Framework is a good example of how governance between the UK and devolved governments should function. This has been recognised by members of the UK ETS Authority, who believe that the UK ETS governance and ways of working, underpinned by the Common Framework, represent a strong example of collaborative working on devolved policy.

As you will know, all Common Frameworks are jointly owned by the four governments of the UK. Therefore, amendments to the framework can only be made if agreed by each government, once scrutiny has been completed in each of the four parliaments. It is therefore impossible to accept your recommendations regarding the timing of amendments, as we cannot predict when scrutiny will be completed. This also means that any changes to the framework and our acceptance of any of your recommendations below should be taken as provisional and subject to agreement with the devolved governments.

Thank you again for taking the time to write.

Yours ever,

**Rt Hon Graham Stuart MP**  
Minister of State for Energy Security & Net Zero

## **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 ETS and EU ETS are separate policies with a clear delineation of coverage. The UK ETS applies UK-wide with the exception of electricity generators in Northern Ireland and the two schemes operate independently. While Northern Ireland electricity generators' participation in the EU ETS is an international commitment, and so reserved, we engaged with Northern Ireland officials in developing these arrangements and would do so should changes be proposed. International negotiations are reserved as the committee acknowledges, however as stated on page 16 of the Common Framework "In the event that a link between the UK ETS and EU ETS is agreed, the Framework will need to be reviewed immediately by the Authority, in parallel with policy and legal development."

Any member of the UK ETS Authority may request a change in scope to the Common Framework at any time, and any such proposal would be considered by the Authority via the decision-making process laid out in the document.

## **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?***

The UK ETS Registry has been running effectively since the inception of the UK ETS on 1st January 2021. Auctions are successfully delivered every fortnight and free allowances have been allocated to operators by 28th February. We are always keen to improve the operation of the scheme and have an open dialogue with the devolved governments, the devolved regulators, and other stakeholders in this respect. The Environment Agency's role as the Registry Administrator was agreed by the Authority and all of the environmental regulators across the UK. There are no plans at this time to change the specific arrangement regarding the Environment Agency's role in maintaining the Registry, although this will be reviewed by the environmental regulators and the Authority at the end of this year.

## **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.***

These are not drafting errors. This framework was initially developed while the UK was still a participant in the EU ETS and has been developed since the launch of the UK ETS in 2021. As set out in the introduction to the document “In developing joint governance arrangements for the new UK ETS, it was both necessary and desirable to document and draw upon the Parties’ shared experience of EU ETS operation and governance. Consequently, a large part of the FOA is used to set out how the EU ETS and its governance structure operated prior to the end of the Transition Period on 31st December 2020.” There is one instance where we believe this could be clarified on page 30 of the framework, and we will seek to do so.

There was a robust review and quality assurance process for reviewing this document, with multiple rounds of review within the UK Government and the devolved governments. While the formatting error you highlight in question 8 was regrettable, we do not believe that changes to the review process in future are required, especially as the Authority is not anticipating significant changes to the Common Framework in the near future.

## **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.***

The Authority selected the most relevant legislation to the UK ETS. Much retained EU law is inoperable and irrelevant to the UK ETS. However, we understand that the committee wishes to see this information made available. We will discuss this within the Authority, and propose to make these amendments to the Common Framework, or make the list of REUL available through the REUL process. The committee will be notified accordingly when this is agreed.

## **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.***

Page 23 lays out the international obligations that are relevant to the UK ETS, stating that “Following the UK’s exit from the EU, the UK remains party to the following international agreements relevant to the EU ETS:” before listing the three international obligations we remain party to. These obligations are the Kyoto Protocol, Paris Agreement and CORSIA. The document then states how those agreements pertain to the UK ETS and we do not believe more detail on this is warranted.

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

This is correct. Kyoto Protocol units are no longer linked to the UK ETS scheme.

***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.***

As stated on page 24, “the Department for Transport (DfT) is responsible for aviation policy, including obligations arising under the Convention on International Civil Aviation (the Chicago Convention) through which CORSIA was adopted, this Common Framework recognises the role of DfT in governance arrangements for the UK ETS.” The implementation of the Chicago convention and, in turn, CORSIA is a reserved matter and is not within the remit of the UK ETS Authority. As such, it cannot be included in the scope of the UK ETS Common Framework as the governance process the framework describes cannot apply to the CORSIA decision making process. However, the UK Government is currently considering how the implementation of CORSIA could interact with the UK ETS, following an initial consultation led by DfT in 2021. The devolved governments were consulted throughout the process of developing this consultation. If an option is pursued that would require changes to the UK ETS, then that decision will be taken through the UK ETS Authority. Although CORSIA is a reserved policy, any changes to the UK ETS would be agreed by all Authority members. We will consult again on our approach to interaction between the schemes in due course.

## **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?***

The UK Government is committed to working together with devolved governments on the TCA implementation issues and representing the collective interests of the UK to the EU.

Devolved governments have been included in the preparations for TCA Specialised Committees and have been invited to attend Specialised Committees as UK delegate observers. For example, officials from the devolved governments attended the last Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development (LPF) in October.

Devolved government officials and ministers have been engaged in preparations for meetings of the TCA Partnership Council and were invited to observe again at the most recent Partnership Council meeting on 24 March.

## **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?**

The UK ETS does not interact with any other common framework.

## **Governance**

**At some points in the Framework, it is unclear which structures relate to the UK 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.**

As stated in the introduction on page 7, “The Common Framework establishes how the four governments will work together as the Authority to exercise decision-making powers and responsibilities relating to the implementation and ongoing maintenance of the UK ETS.” This includes decisions related to the UK ETS Common Framework. For this reason, governance processes relating to the UK ETS as a whole and those relating to the Common Framework cannot and should not be distinguished.

**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.**

This is the result of a formatting error that occurred in preparing the Common Framework for final publication. Section 8 is included under the heading “Decision Making”. We thank the committee for alerting the Authority to this error, which will be corrected to ensure that all sections are correctly labelled.

**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 governance structures laid out in the common framework have functioned well since January 2021, when the UK ETS was established. This framework has enabled us to implement and develop the UK ETS effectively and so far, no significant issues with the Common Framework or the governance structures described therein have been raised. Should significant issues be raised that cannot be resolved among officials, there is a responsible team who will lead on resolving issues, and proposing any amendments in collaboration with other teams across the UK ETS Authority.

**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.**

The dispute resolution process has not been required during the operation of the UK ETS to date, and it is not possible to predict the scale or complexity of a dispute that may require its

operation. Should such a resolution be required, a timescale for the specific issue will be agreed across the Authority. The Authority has committed to review the dispute resolution process as part of the wider governance framework review (page 16 of the Common Framework), and we will propose including consideration of whether a prescribed timeline is appropriate at that point.

## **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 Authority engaged with stakeholders in 2019 during the consultation 'The Future of UK Carbon Pricing'. The publication proposed to align the various functions and bodies in a UK ETS with those that already existed in the EU ETS. Respondents supported this proposal, and the Common Framework reflects this approach.

The scope of this Common Framework covers legislative and non-legislative arrangements applying to the design, implementation, and operation of the UK ETS. As this Common Framework applies to processes internal to UK and devolved governments, we have not conducted any additional external stakeholder engagement specifically regarding it. We think it unnecessary to include commentary on stakeholder engagement on "the Future of Carbon Pricing" as that was summarised in the government response to that consultation.

## **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.***

As stated above, the Authority selected the most relevant legislation to the UK ETS, but recognises the committee would like to see more detail. We will discuss this within the Authority and propose to make these amendments to the Common Framework, or make the list of REUL available through the REUL process. The committee will be notified accordingly when this is agreed. This will include setting out our intent to preserve REUL that is still required for the functioning of the UK ETS, as well as the legislation relating to Northern Ireland's participation in the EU ETS mentioned in your letter.

## **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.***

This framework does not interact with the UK Internal Market Act 2020. The allowances traded via the UK ETS, which are electronic units of account, do not constitute "goods" within the meaning of that Act. The ETS does not itself provide a service. Further, although installations are required to have "permits" to carry out a "regulated activity" under the UK ETS legislation, this does not come within the scope of Part 2 of that Act, as the permit relates to carrying out a particular activity at a particular location and does not relate to "carrying on a business of providing particular services". We therefore do not think it relevant to include in the Common Framework.

## **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.***

As stated on page 16 "The governance review shall provide the opportunity to assess decision-making and dispute resolution processes and allow for amendments to this Concordat or any subsidiary governance agreements or documentation". We think this provides sufficient clarity that the Common Framework itself will be included in the scope of the governance reviews.