



Northern Ireland
Assembly

Committee for Agriculture, Environment and Rural Affairs

Common Framework Position Paper Chemicals and Pesticides

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Contents

- 1. Powers and Membership**
- 2. Introduction**
- 3. Common Frameworks: Background**
- 4. Common Framework Timeline**
- 5. Chemicals and Pesticides Provisional Common Framework**
 - **Scope**
 - **Purpose**
 - **Structures**
 - **Dispute Resolution**
 - **Monitoring and Enforcement**
 - **Protocol Issues**
- 6. Committee Consideration and Recommendations**

1. Powers and Membership

1. The Committee for Agriculture, Environment and Rural Affairs is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of Strand One of the Belfast Agreement 1998 and under Assembly Standing Order 48.
2. The Committee has a scrutiny, policy development and consultation role with respect to the Department for Agriculture, Environment and Rural Affairs and has a role in the initiation of legislation.
3. The Committee has power to:
 - consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
 - consider subordinate legislation and take the Committee Stage of primary legislation;
 - call for persons and papers;
 - initiate inquiries and make reports; and
 - consider and advise on matters brought to the Committee by the Minister of Agriculture, Environment and Rural Affairs
4. The Committee has nine members, including a Chairperson and Deputy Chairperson, and a quorum of five. The membership of the Committee is:

Mr Declan McAleer MLA (Chairperson)

Mr Philip McGuigan MLA (Deputy Chairperson)

Ms Clare Bailey MLA

Mrs Rosemary Barton MLA

Mr John Blair MLA

Mr Tom Buchanan MLA

Mr Harry Harvey MLA

Mr William Irwin MLA

Mr Patsy McGlone MLA

2. Introduction

5. This paper outlines the considerations of the Assembly's Committee for Agriculture, Environment and Rural Affairs (AERA) in respect of the Chemicals and Pesticides Provisional Common Framework that was published in February 2022.
6. The Committee undertook scrutiny of the Framework in advance of the nationally agreed deadline that jurisdictions across the United Kingdom should aim to have completed parliamentary scrutiny of all Common Frameworks by the end of March 2022.
7. It outlines:
 - A brief background to the development of Common Frameworks generally
 - A timeline of the provision of information to the Committee relating to the Common Framework and actions taken by the Committee
 - A summary of the core aspects of the Framework
 - The Committee's observations and recommendations

3. Common Frameworks: Background

8. Prior to the Brexit referendum in June 2016 a significant number of policies and regulatory frameworks which applied across the United Kingdom (UK) were derived from legislation passed through the European Union (EU) parliament, even if these areas fell within the ostensible authority of devolved administrations. Following the UK's decision to leave the EU, many of these regulations were automatically transposed into UK law in order to ensure stability and maintenance of a common approach through the transition period.
9. In 2017 the UK Government and devolved administrations in Scotland, Wales and Northern Ireland (NI) commenced a process to evaluate how they would interact in

areas of devolved competence where EU legislation had previously had primacy, and how to manage future policy development on these matters.

10. All jurisdictions concluded that maintaining a common approach was desirable and have developed Common Frameworks across a number of policy areas in order to establish a governance structure to facilitate inter-jurisdiction discussion on policy alignment, management of issues of contention and resolution of disputes.

11. The following principles, which have been endorsed by the devolved administrations, underpin Common Frameworks:
 - Common Frameworks will be established where necessary in order to enable functioning of the UK internal market, ensure compliance with international obligations, negotiation and implementation of new trade agreements, manage common resources and safeguard security

 - Frameworks will respect devolution settlements and the democratic accountability of devolved legislatures – established conventions and practices will be maintained and the competence of devolved institutions will not normally be adjusted without their consent. Devolved administrations will be given equivalent flexibility as afforded under EU regulations and may have a significant increase in decision-making powers

 - Frameworks will recognise the economic and social linkages between NI and Ireland and that NI is the only part of the UK which shares a land border with the EU

12. Common Framework development has been led by the Cabinet Office through a five-phase process encompassing stakeholder consultation and engagement of officials across administrations.

13. The particular issues arising from the establishment of the Northern Ireland/Ireland Protocol (the Protocol) which means that some areas of EU legislation continue to apply in NI have been considered in the design of Framework governance structures.
14. This paper contributes to “Phase 4” of the development process by facilitating parliamentary scrutiny and recommendations.

4. Common Framework Timeline

15. A brief timeline of the AERA Committee’s engagement on the Common Framework is provided below:
 - **3 November 2020:** the Department notified the Committee that the Minister had been informed of progression of the Chemicals and Pesticides Common Framework to Phase 3 of the Development Process and provided a summary of the Framework which was sent to stakeholders
 - **3 December 2020:** Officials from the Department provided an oral briefing to the Committee on the salient aspects of the Framework proposals
 - **23 June 2021:** The Department shared a summary of the Common Framework with the Committee to support its scrutiny activities
 - In June 2021 the Committee wrote to the House of Lords Common Framework Scrutiny Committee to seek an update in respect of Framework progress
 - **6 July 2021:** The Department informed the Committee that it anticipated Common Frameworks to have Ministerial clearance by mid-October 2021, thereafter enabling Committee scrutiny. The Committee subsequently sought clarity on whether the Department had requested legal advice on some of the draft frameworks and why there was a delay in issuing them for parliamentary scrutiny

- **17 September 2021:** the Committee received an update from the Assembly's EU Affairs team indicating that some Frameworks may be released for scrutiny by the end of September 2021
- **20 October 2021:** the Department advised that several cross-cutting issues were preventing clearance of Frameworks and that it would likely be the end of November 2021 before the Committee would have sight of the documents. The Committee sought clarity on what the outstanding cross-cutting issues were
- **8 November 2021:** the Department informed the Committee that work was on-going to resolve the issues with a cross-jurisdictional meeting scheduled for mid-November
- **13 December 2021:** the Department wrote to the Committee advising that Framework development had moved forward and cross-administration processes had commenced with a view to release of Frameworks early in 2022 for Committee evaluation
- **3 February 2022:** Provisional Common Framework published
- **4 February 2022:** The Committee wrote to the Department seeking its views on the published Framework and if there are any specific issues pertaining to its structure and function. The Department replied to the Committee on 17 February 2022
- **17 February 2022:** The Committee facilitated an inter-stakeholder discussion with interested parties in respect of the provisions of the Common Framework and the potential implications of policy divergence between NI and other jurisdictions in this area

5. Chemicals and Pesticides Common Framework

Scope

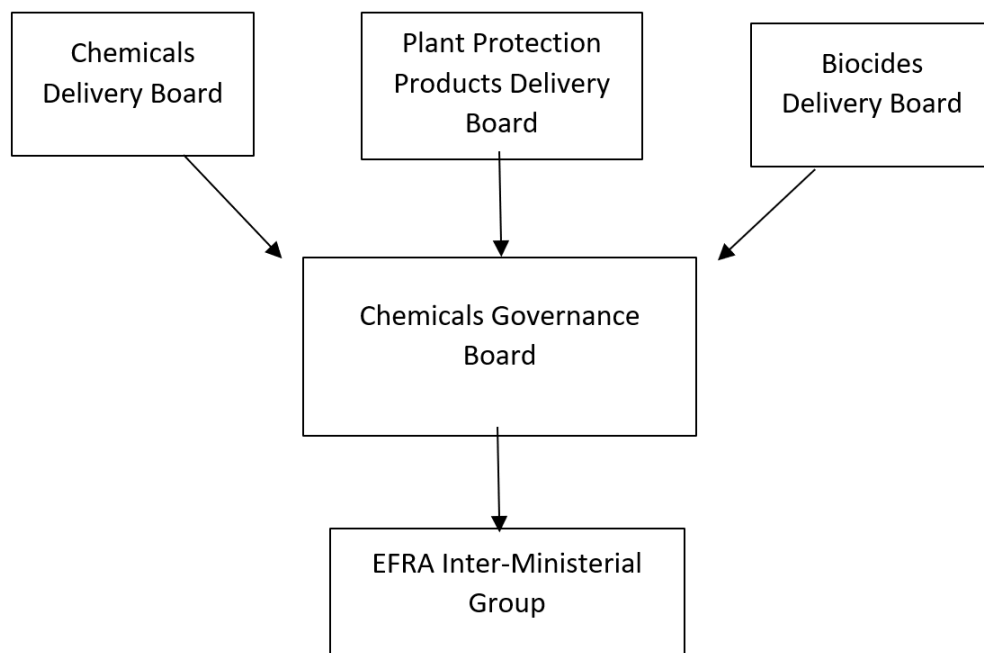
16. The Framework sets out a governance structure to facilitate commonality of approach across UK jurisdictions in respect of Chemicals and Pesticides policy and to assess fully the regulatory, policy and financial implications that potential differences may cause.
17. It also seeks to ensure that arrangements for the use of Chemicals and Pesticides is safe in order to protect the natural environment.

Purpose

18. The overarching aim of the Framework is to provide a mechanism for administrations to discuss policy in relation to:
 - Classification, Labelling and Packaging
 - Detergents
 - Persistent Organic Pollutants
 - Plant Protection Products
19. Proposed changes to policy made by “one or more of UK Government, the Scottish Government or the Welsh Government... in a way that has policy or regulatory implications for the rest of the UK”, or rule changes brought about in NI due to compliance with the Protocol, will be discussed, considered and managed under the provisions of the Common Framework.
20. The Framework expressly states that “As rules evolve to meet the emerging regulatory needs of the UK, Scottish and Welsh Governments, this Framework will ensure the full participation of Northern Ireland in discussions such that the views of the relevant Northern Ireland Executive Minister(s) are taken into account in reaching any policy or regulatory decisions by the UK, Scottish or Welsh Governments.”

Structures

- 21. There are pre-existing cross-jurisdiction working groups of policy officials including the Chemicals Delivery Board, Plant Protection Products Delivery Board and Biocides Delivery Board. These groups will continue to operate and will serve as the primary discussion and decision-recommending fora in respect of Chemicals and Pesticides Policy relevant to their purview.
- 22. The UK Chemicals Governance Group, comprising senior officials from all administrations, will provide strategic oversight to the working groups, considering recommendations for policy decisions and discussing matters of potential divergence. The Chemicals Governance Group will liaise with relevant statutory regulatory bodies as required to help inform its considerations.
- 23. These groups can make recommendations to the DEFRA Senior Officials Programme Board (SPOB) comprising senior officials (typically at Director level) from all jurisdictions.
- 24. The EFRA Inter-Ministerial Group (IMG) will act as the senior ministerial forum for decision-making in respect of matters which require senior input and/or cannot be resolved or decided at lower tiers.



Dispute Resolution

25. The Framework 's dispute resolution procedure is designed to facilitate a structured mechanism for the management of issues arising due to a lack of agreement on a policy proposal, if a parameter of the governance framework has been breached or a Common Framework principle has not been respected.
26. Parties are expected to exhaust all avenues before engaging the dispute resolution process and seek to resolve issues at official level without the need for escalation.
27. Issues should, in the first instance, be discussed at the Chemicals Governance Board to seek consensus but if this is not possible the Board has no further role in the management of disputes and the matter should be referred as follows:
 - EFRA-related Matters – to the DEFRA Strategic Oversight Programme Board
 - Non-EFRA related Matters – to the relevant Senior Responsible Officers group
28. If resolution cannot be achieved, the issue can be referred to the SOPB at the triggering party's request and further to the EFRA Inter-Ministerial Group (IMG). Finally, and as a last resort, disputes/disagreements can be referred to Intergovernmental Structures for arbitration and management.
29. While achieving policy harmony is considered to be ideal, an *“agreement to disagree is acceptable unless this causes disruption, has a detrimental effect on the operation of any of the chemicals' regimes to which the Common Framework relates, or negatively impacts the ability to meet the Common Framework principles.”*

Monitoring and Enforcement

30. The Framework will be reviewed initially six months after its commencement and thereafter every three years. Reviews will encompass an assessment of intergovernmental cooperation and collaboration, whether parties are complying with recommendations, if divergences have taken place and how they have been handled.

31. Further, in the course of the review parties can seek the input, advice and assessment of third parties to assess the issues and functioning of the Framework.
32. An exceptional amendment to the functioning of the Framework may be requested by any party regarding a “significant issue”; one that is time sensitive and fundamentally impacts on the operation and scope of the Framework.
33. A recommendation for amendment to the Framework must be agreed by all parties at Ministerial level, precipitating revision of Framework documents which participants must sign up to.

Protocol Issues

34. NI will have to maintain parity with a range of EU legislation pertaining to the labelling, testing, use, marketing and regulation of chemicals, pesticides, mercury, pollutants and biocides via the Protocol.
35. The Framework explicitly notes that the Protocol could result in divergence between the regions of the UK
36. It is outlined that *“Where rules in Northern Ireland change in alignment with the EU, the Framework will form the basis of a mechanism to ensure consideration by the four governments of any changes and will enable them to determine any impacts and subsequent actions arising from these changes.”*
37. The Framework specifically states that a relevant NI Executive Minister will have the ability to trigger a review under the dispute resolution procedure in respect of any concerns they may have in respect of GB-only proposals.

6. Committee Considerations and Recommendations

38. The Committee has made a number of observations and recommendations below which should be considered in terms of finalising the Common Framework.
39. Through its engagement with stakeholders the Committee identified a number of issues in respect of the Chemicals and Pesticides Common Framework which are of particular relevance for NI and in respect of how the Framework will function:

- There is a fundamental need to ensure regulatory alignment and harmonisation in respect of oversight and testing of water facilities in NI and ROI
- The Common Framework is a high-level governance document and due consideration needs to be given as to how decisions taken at policy-level will translate into impacts for farmers, growers and producers “on the ground”
- There is very little proactive engagement between industry and DAERA in respect of Chemicals and Pesticides policy and there has been little to no prior consultation in respect of the Framework
- NI is currently experiencing divergence in this area and is essentially in a regulatory “no man’s land” in terms of regulatory oversight as the Chemicals Regulation Division of the Health and Safety Executive (UK) has not taken on responsibility of regulating products being used in NI
- As a result of complying with Protocol regulations, which effectively means that NI producers need to adhere with two regulatory systems, chemicals and pesticide producers would need to develop new, bespoke labels for products used in NI and this is simply not economically viable for many manufacturers
- Further, local farmers are unable to use fertilizers on land in NI which is purchased in the ROI and subject to the PCS regulatory system and if they do so could be subject to penalty. This further limits the options available for local producers
- The likelihood of further divergence in this sphere is high and of particular concern is the Maximum Residue Levels (MRL) of different chemicals. In the scenario whereby EU laws allow a specific MRL for certain food products and this differs to GB, those products could not be marketed and sold in GB

40. DAERA did not highlight any specific issues to the Committee in respect of the Framework and noted that “the governance structures and decision-making processes outlined in this provision framework have been in operation during the

past year and DAERA officials have worked collaboratively with Defra and Devolved Administrations across the policy areas involved.”

41. The Committee wrote to the House of Lords Common Framework Scrutiny Committee in December 2021 to seek its view on any specific issues that it should be aware of. The House of Lords Committee highlighted several potential issues of concern applicable to all Common Frameworks:

- There appears to have been a lack of engagement with the Irish government in respect of Common Frameworks and implications for North-South policy interaction
- Generally, there has been a lack of engagement with community and voluntary stakeholders in NI to seek their views on Common Frameworks
- How the Subsidy Control Bill which is currently progressing through Parliament will overlap with and impact on Common Frameworks which deal with subsidies

42. The Committee makes the following observations in respect of the Common Framework:

- There is comparatively little detail included in the Common Framework document about how the various governance fora will interact with each other
- The provision to involve third parties in the review of the Common Framework is beneficial
- The document states that the Framework will provide a mechanism to discuss and manage proposed policy changes *“Where one or more of UK Government, the Scottish Government or the Welsh Government proposes to change rules in a way that has policy or regulatory implications for the rest of the UK, or where rules in Northern Ireland change in alignment with the EU”* – this suggests that NI may be prohibited from proposing policy changes under the

auspices of the Framework which are unconnected to its obligations under retained EU law

- The Common Framework as drafted outlines that should Ministers fail to reach agreement on a dispute that the matter can be referred to Intergovernmental Relations (IGR) Ministers for review. Clarity should be provided as to how such an issue would be managed at IGR level and if the Dispute Resolution process as outlined in the Review of Intergovernmental Relations (January 2022) would apply
- There is no reference to the need for continued parliamentary engagement in terms of the review, effectiveness and operation of the Common Framework
- It is unclear to which forum issues should be highlighted in the event that NI is precluded from aligning with policy changes made in GB as a result of compliance with Protocol-related EU legislation, and whom would represent NI's interests at such a forum
- There is significant duplication in the Common Framework document
- Processes for engaging with industry representatives to ensure their views are considered in policy deliberations are unclear
- It is unclear in what circumstances a dispute will be escalated from EFRA IMG-level to Intergovernmental Structures and whether this will require consensus by all Ministers, or can be triggered by a Minister acting independently

43. It is recommended that:

- DAERA should forward the Committee's observations and recommendations to the Department for Levelling Up, Housing and Communities as part of the Common Framework Scrutiny Process

- DAERA should urgently engage with the Health and Safety Executive Chemicals Regulations Division to discuss and clarify regulation of the use of Chemicals and Pesticides locally
- DAERA should clarify its role and responsibilities in terms of regulatory oversight of different types of Chemicals and Pesticides in respect of Protocol obligations and UK-wide legislation, and what role the newly created Office for Environmental Protection will have in this regard
- DAERA should clarify if NI will continue to follow UK legislation in respect of Directive 96/59/EC on PCB/PCT (Stockholm Convention)
- DAERA should clarify the specific legislation, either under the auspices of the Protocol or UK-wide law, which apply to NI in respect of Persistent Organic Pollutants (POPs)
- DAERA should ensure that the issues being experienced by local producers in terms of access to increasingly fewer Chemicals and Pesticides products due to regulatory complexity are escalated to the appropriate level within the Common Framework and/or Joint Specialised Committee Structure in order to seek a resolution
- DAERA should confirm if NI will have the ability to propose policy changes to other jurisdictions in Great Britain which are independent of its obligations to maintain parity with EU legislation
- DAERA should provide a short annual update to the Committee in respect of the functioning and effectiveness of the Common Framework
- DAERA should notify the Committee on an on-going basis of any changes which are agreed to the Terms of Reference of the groups established under the Common Framework and/or the concordat which outlines how jurisdictions will engage with each other

- The Committee should be informed of any substantive policy disputes that are managed under the auspices of the Framework pertaining to NI activities
- DAERA should clarify the appropriate forum for consideration of issues in the scenario whereby NI is compelled to maintain parity with EU legislation and other jurisdictions in the UK do not follow suit, leading to divergence, and whether this would be addressed at the Specialised Committee on the Ireland/Northern Ireland Protocol (or a different governance structure)
- DAERA should clarify if the Secretary of State will assume responsibility for representing NI's interests in the functioning of the Common Framework, should the local Executive collapse
- DAERA should set out how it intends to maintain regular engagement with industry and professionals in respect of Chemicals and Pesticides policy to inform its views and participation in the Common Framework structure