



Northern Ireland
Assembly

Committee for Agriculture, Environment and Rural Affairs

Common Framework Position Paper Fertilizers

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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 Fertilizers 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 Fertilizers Common Framework is provided below:

- **9 December 2020:** The Department notified the Committee that the provisional content of the Framework had been agreed by the Minister and a summary of the provisions in respect of engagement with stakeholders was sent to the Committee
- 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:** Fertilizers 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
- **10 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. Fertilizers Common Framework

Scope

16. The Framework sets out a governance structure for administrations to discuss policy alignment, legislation and regulatory oversight pertaining to the placing on the market, import, export, sale and use of fertilizers.
17. Decisions regarding the use of Ammonia Nitrate in NI are a reserved matter and it is not permissible to export/import products to NI which have 79%+ Ammonia Nitrate constitution.

Purpose

18. The overarching aim of the Framework is to provide a mechanism for administrations to discuss policy and strategies with a view to:
 - Facilitating commonality of approach across UK jurisdictions in respect of fertiliser management which is recognised as beneficial in terms of minimising barriers to trade, providing clarity to consumers and reducing the burden on manufacturers
 - Ensuring farmers have access to effective and safe fertilizers
 - Ensuring protection and enhancement of the natural environment
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

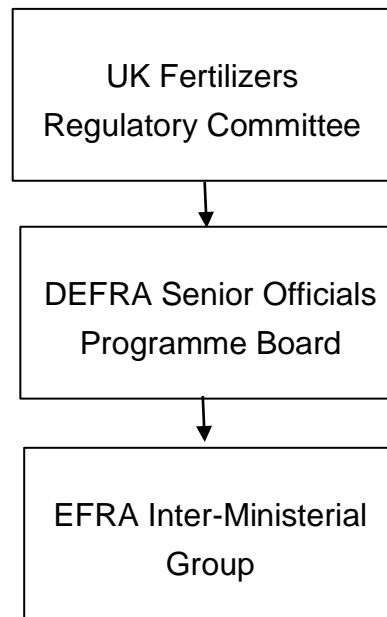
21. The Framework will be delivered within a three-tiered governance structure:

- The **UK Fertiliser Regulatory Committee (FRC)**, comprising policy officials from all administrations, has been established to consider the designation, definition and composition of fertilizers, setting of market standards and upholding these.

The Committee will meet quarterly, or more frequently as required, and will act as the main decision-making body in respect of the Common Framework and issues should, where possible, be addressed via consensus.

The Committee may consider possible divergences and make recommendations to the next tier. *“When considering a proposal or recommendation for divergence in one or more nations, as an additional element to its opinion, the Committee should consider the impact divergence will have on public health and environmental protection in the UK, consumer interests, the function of the internal market, internal trade obligations”* or other JMC principles

- The **DEFRA Senior Officials Programme Board (SOPB)** will act as the senior-decision making forum and arbiter in the case of disputes. The group will meet to discuss significant strategic issues or to facilitate dispute resolution.
- **The Inter-Ministerial Group (IMG) for EFRA** has ultimate responsibility for making policy decisions based on the recommendations received, resolving contentious issues and for engaging to resolve disputes where resolution has not been achievable at lower levels.



Dispute Resolution

22. 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.

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.

23. Issues should, in the first instance, be discussed at the UKFRC to seek consensus but if this is not possible the UKFRC has no further role in the management of disputes and the matter should be referred as follows:

- Regarding Policy Matters – to the Four Governments Directors Group which will meet on an ad hoc basis to resolve disputes only
- Regarding Framework Matters – to the Frameworks Management Group

24. If resolution cannot be achieved, the matter can be referred to the SOPB at the triggering party's request and further to the EFRA IMG. Finally, and as a last resort,

disputes/disagreements can be referred to Intergovernmental Structures for arbitration and management.

25. While achieving policy harmony is considered to be ideal, the “Framework will not prejudice the right of Parties to agree to disagree in certain circumstances.”

Monitoring and Enforcement

26. The Framework will be reviewed initially one year after its commencement and thereafter every three years by the FRC. 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.
27. 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.
28. 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

29. NI will have to maintain parity with EU Regulation 2003/2003 which encompasses the labelling of fertilizers. This regulation is being replaced by Regulation 2019/1009 to introduce a new conformity assessment regime for EU fertilizers products (FPR) which will cover a broader range of chemicals and new contaminant limits. This will come into effect in NI in July 2022.
30. Jurisdictions in GB have made provision for alignment with these new regulations via the Agriculture Act 2020 *“to enable each Party to regulate the modern fertilizers*

sector more appropriately using a similar conformity assessment regime to that provided for the in the FPR.”

31. 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

32. The Committee has made a number of observations and recommendations below which should be considered in terms of finalising the Common Framework.
33. Through its engagement with stakeholders the Committee identified a number of issues and potential opportunities in respect of the Fertilizers Common Framework which are of particular relevance for NI and in respect of how the Framework will function:
 - There is pre-existing divergence between jurisdictions in respect of Fertilizers policy, for example NI has been unable to import substances with ammonium nitrate over a certain level
 - The extent of engagement between professionals/industry and DAERA in respect of policy matters is ad hoc and it is imperative that there are effective communication channels to ensure that the needs, interests and views of professionals are transmitted to DAERA through to the Framework groups, and vice versa
 - The introduction of the new FRP in NI in July 2022 will present significant challenges for producers, marketers and users of fertilizers as NI will effectively be subject to two separate regulatory regimes, which, if enforced strictly would necessitate the generation of a unique label for fertilizers used locally

- Industry representatives are hopeful that the structures proposed under the Framework may provide the opportunity to identify a flexible and workable solution to the anticipated difficulties for NI stakeholders in terms of labelling and use of Fertilizers

34. DAERA informed the Committee that “The Framework should present an effective structure to ensure that policy and regulatory decisions relating to fertilisers will, insofar as is possible, be made on a UK-wide basis, following the UK’s departure from the European Union. On that basis it will provide a flexible and adaptable basis for future cooperation and coordination between the four Administrations while respecting the devolution settlement and potential for divergence.”

35. 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

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

- The wording in the Common Framework outlining the scope of issues that will be considered by the FRC when evaluating potential divergence(s) is

constructive: *“When considering a proposal or recommendation for divergence in one or more nations, as an additional element to its opinion, the Committee should consider the impact divergence would have on public health and environmental protection in the UK, consumer interests, the functioning of the internal market, international obligations or other JMC principles.”*

- The Terms of Reference for the DEFRA SOPB are not included in the Common Framework document
- The document makes reference to the “Fertilizer Liaison Group” on several occasions but no detail is provided on the scope, composition or role of this entity. It is unclear if this is an alternative reference to the FRC
- 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

37. 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 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 Fertilizers policy to inform its views and participation in the Common Framework structure