



Northern Ireland
Assembly

Committee for Agriculture, Environment and Rural Affairs

Common Framework Position Paper Animal Health and Welfare

This report is the property of the Committee for Agriculture, Environment and Rural Affairs.

Neither the report nor its contents should be disclosed to any person unless such disclosure is authorised by the Committee.

Contents

1. Powers and Membership	3
2. Introduction	4
3. Common Frameworks: Background.....	5
4. Common Framework Timeline	7
5. Animal Health and Welfare Common Framework	9
Scope	9
Purpose.....	9
Structures	11
Dispute Resolution	12
Monitoring and Enforcement.....	13
Protocol Issues.....	13
6. Committee Considerations and Recommendations	15

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 Animal Health & Welfare 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 Animal Health and Welfare Common Framework is provided below:

- **2 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 and proposals was sent to the Committee
- **10 December 2020:** The Department provided an oral briefing to the Committee regarding the summary aspects of the Framework
- 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 ongoing 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:** Animal Health and Welfare 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. Animal Health and Welfare Common Framework

Scope

16. The Framework sets out a governance structure for administrations to discuss policy alignment, legislation and regulatory oversight pertaining to Animal Health and Welfare including, but not limited to, the following:
 - Maintaining protections for animals
 - Traceability in the supply chain of animal goods
 - Trade in animal and animal-related products
17. The Framework does not encompass policy decisions relating to zootechnics or management of invasive non-native species.
18. The UK will continue to be bound to the World Organisation for Animal Health Standards and the World Trade Organisation Sanitary and Phytosanitary Agreement. The UK Government will represent devolved administrations at relevant meetings and summits of these entities and report any issues accordingly.

Purpose

19. The overarching aim of the Framework is to provide a mechanism for administrations to discuss policy and strategies with a view to:
 - Facilitating shared ways of working and common approaches across Animal Health and Welfare policy in all UK jurisdictions
 - Recognising the benefit of having consistent legislation and agreed approaches for changing rules
 - Delivering commonality of policy approach where possible and appropriate
 - Ensuring consistent application of standards
 - Managing policy divergence
20. While ostensibly the Framework seeks to facilitate commonality across jurisdictions, it notes a number of existing areas where there is a difference of policy approach including the management and monitoring of bovine tuberculosis, chicken stocking density and defined notifiable animal diseases.

21. Parties to the Framework, i.e., administrations across the UK, commit to not diverge from baseline standards *“in a manner harmful to biosecurity, welfare or the UK Internal Market.”* The defined baseline standards are as follows:
 - In NI – EU legislation as outlined in the Annex to the Protocol
 - In England, Wales and Scotland –pre-existing Animal Welfare legal protections in place at the end of the Brexit transition period (31 December 2021)
22. Chief Veterinary Officers (CVOs) and policy leads across jurisdictions will be responsible for determining whether any divergence from the baseline standards is harmful.
23. It is noted in the Framework that parties may only seek to diverge from the baseline standards to introduce more stringent biosecurity and animal health protections and that other parties must be notified of any intention to do so as soon as possible.
24. 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.
25. Parties to the Framework are obligated to consider if it would be beneficial for jurisdictions in Great Britain (GB) to accord with any change brought about in NI as a result of continued compliance with EU legislation: *“If NI has to diverge in order to maintain parity with the EU the same review process will be followed and the same assessments made as to whether it would be in the best interests of GB to follow suit or allow divergence.”*
26. 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

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

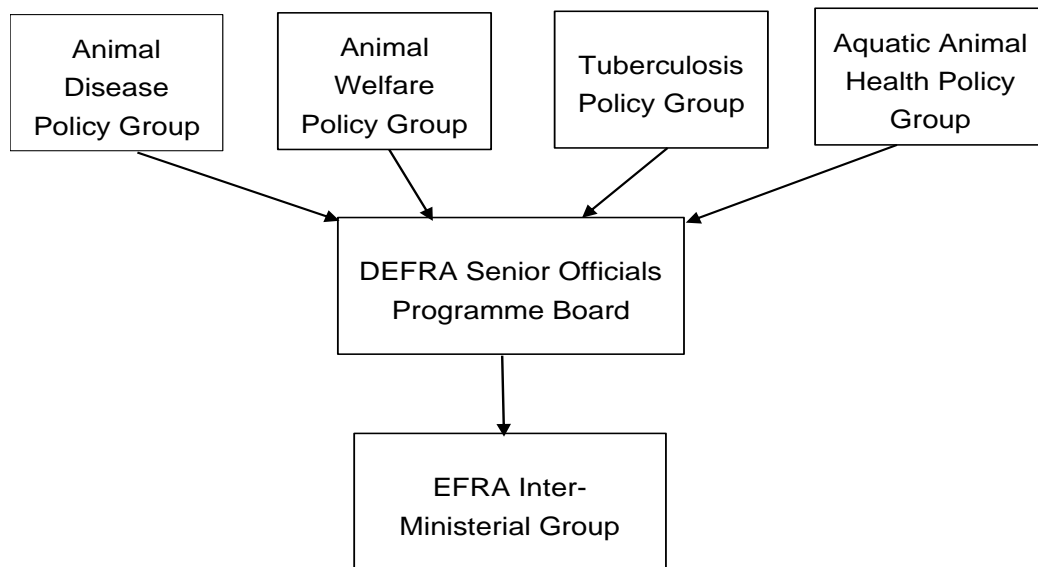
- There are pre-existing cross-administration fora of policy officials covering a range of Animal Health and Welfare areas: the Animal Disease Policy Group, Animal Welfare Policy Group, Tuberculosis Policy Group and Aquatic Animal Health Policy Group.

These will continue to operate and will serve as the primary deliberation and decision-making entities in respect of the Common Framework, i.e., parties should engage primarily through these groups and raise issues, ideas for policy change or developments here in the first instance.

- 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 only meet to discuss significant strategic issues or to facilitate dispute resolution.

The SOPB will not make substantive decisions on scientific, policy or technical matters without consulting appropriate experts, including respective CVOs. It will however test, challenge and appraise evidence and recommendations which are presented by the various cross-official groups.

- **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

28. The Framework sets out the parameters for resolving disagreements and disputes and differentiates between:
- A difference of view: no impact on other parties
 - A disagreement: requires some resolution, ideally at official level
 - A dispute: a disagreement which cannot be resolved and needs escalation and/or refers to a decision made with an unwanted impact on another party
 - “Agree to Disagree”: no consensus on a way forward but consequences can be managed
29. 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.
30. 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.

31. The various cross-official policy groups will have primary responsibility for resolving disputes and issues will be raised to these fora in the first instance.
32. 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.
33. It should be noted that whilst desirable, achieving consensus across jurisdictions is not mandated, and there may be scenarios whereby different administrations "agree to disagree" on aspects of policy, leading to divergence across localities.

Monitoring and Enforcement

34. The Framework will be reviewed initially one year after its commencement and thereafter on an ad hoc basis by the Animal Disease Policy Group (ADPG).
35. Suggestions for amendment to the functioning of the Framework can be raised via any party to the ADPG and an independent review of issues can be requested on its effectiveness and operation.
36. Further, a review of activities can be undertaken at any time at the request of a participating party. This is to ensure that there is flexibility to adapt the Framework in response to any substantive changes in governance arrangements in each jurisdiction or as required by policy developments.

Protocol Issues

37. There is a wide range of EU law in this policy area that will continue to apply to NI under the Protocol including regulations relating to the following:
 - Live animals, germinal products and products of animal origin
 - Animal disease control, zoonosis control
 - Animal identification
 - Animal breeding
 - Animal welfare
 - Official controls and veterinary checks
 - Sanitary and phytosanitary

38. 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

39. The Committee has made a number of observations and recommendations below which should be considered in terms of finalising the Common Framework.
40. Through its engagement with stakeholders the Committee has identified a number of issues pertinent to the Animal Health and Welfare Common Framework which are of particular relevance for NI and in respect of how the Framework will function:
- There is uncertainty regarding divergence that will arise in the future in respect of the management of endemic animal diseases. NI will have to maintain compliance with EU reporting requirements in this regard and jurisdictions in GB will not have to follow the same practice, e.g. it is possible that Bovine Viral Diarrhoea (BVD) will become a notifiable disease across the EU, and by extension in NI via the Protocol, in the near future
 - The 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
 - There is an overlap with the Common Framework and trade policy in respect of animal health and welfare standards. It is critically important to ensure that there is effective engagement between the Common Framework decision-making groups and the Department for International Trade in terms of establishing Free Trade Deals with other countries which may have less stringent animal welfare regulations in place and to ensure that UK-based producers will not be disadvantaged as a consequence
 - There could potentially be a competitive disadvantage for NI farmers having to maintain parity with higher welfare standards than their counterparts in GB due to the need to comply with EU legislation
41. DAERA informed the Committee that it “has no specific issues that it wishes to raise” and that “It is content with the framework as currently proposed.”

42. The Committee wrote to the House of Lords Common Framework Scrutiny Committee in December 2021 to seek its views 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

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

- The wording in the Common Framework which obligates jurisdictions in GB to consider maintaining parity with divergence(s) arising from NI's compliance with the Protocol is useful and should be considered for replication across all Common Frameworks: *"If Northern Ireland has to diverge in order to maintain parity with the EU the same review process will be followed and the same assessments are made as whether it would be in the best interests of GB to follow suit or to allow divergence."*
- The prospect of facilitating an Independent Review Panel to facilitate an assessment of the Framework at a triggering party's request is welcome and the utility of applying this same approach in other Common Frameworks should be considered
- The Terms of Reference for the DEFRA SOPB in the Common Framework appear to be outdated and are different to those in other Common Framework

documents. The most up-to-date Terms of Reference should be included encompassing current membership and composition of this group

- 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 of 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
- There are multiple decision-making fora included under the auspices of the Common Framework which may lead to complexity and monitoring challenges in respect of the changing composition and membership of relevant groups
- The Framework's dispute resolution process references a potential role for the UK-EU Joint/Specialised Committees, but it is unclear as to how this would manifest in practice

44. 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 Animal Health and Welfare policy matters to inform its views and participation in the Common Framework structure

- Provision should be included within the Common Framework document to obligate the Department for International Trade to consult and engage with the groups formed under the Framework when planning Free Trade Deals with other countries which will extend to animal and animal-related products.