



Northern Ireland
Assembly

Committee for Agriculture, Environment and Rural Affairs

Common Framework Position Paper Organic Production

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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 Organic Production 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 Organic Production Common Framework is provided below:

- 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.

The Department advised the Committee that the Organic Production Framework had been approved by all portfolio Ministers and was to be submitted to the Joint Ministerial Committee for clearance.

- **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:** Organic Production 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
- **24 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. Organic Production Common Framework

Scope

16. The Framework sets out a governance structure for administrations to discuss policy in respect of:

- Principles and standards for Organic Production and Certification
- Official controls
- Organic aquaculture

17. Food products sold as “organic” must originate from operators/producers which are registered and certified with a designated control body and subject to regular inspection. Control bodies based in the UK have been accepted by the EU as equivalent which allows products certified by these organisations to be sold into and throughout the EU market.

18. It is noted that there is existing disagreement between Parties on whether certain matters are delegated or reserved in this area but it is not considered that this will *“impact on the ability of the Framework to operate.”*

19. The Framework document references the fact that having a common policy approach across the UK to Organic Production is of utility and that both businesses and consumers benefit from a consistent policy approach and set of legislation.

20. *“Policy consistency should remain where it is agreed that it is necessary or desirable. However, the Framework also allows for divergence as there will be instances where it is appropriate for each nation to take a different approach to organics to respond to nation-specific needs.”*

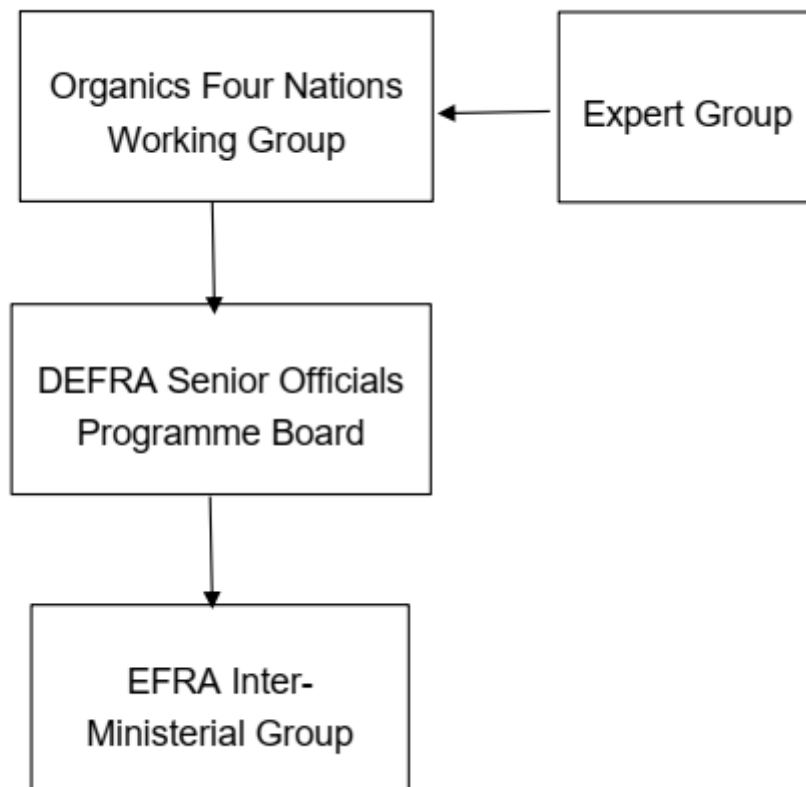
Purpose

21. The overarching aim of the Framework is to provide a mechanism for administrations to discuss policy and strategies with a view to achieving commonality across the UK in respect of changes to organic regulations.
22. In addition, it aims to facilitate the establishment of a UK Organic Products Expert Group, manage the resolution of issues between parties and deliver effective review and amendment of the Framework's functions.
23. 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.
24. 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

25. The primary decision-making forum under the auspices of the Common Framework comprising policy officials from all four jurisdictions is the Organics Four Nations Working Group which will meet on a quarterly basis to establish mechanisms for collaboration, discuss policy changes and potential divergences and manage the establishment of a UK Expert Group.
26. The Expert Group will comprise individuals with extensive experience and knowledge in the relevant technical areas of Organic Production and will largely deliver the same function that was previously provided to UK producers and control bodies by an EU Advisory Committee.

27. The Four Nations Working Group will be obligated to consult with the Expert Group, when operational, for advice and recommendations, but the Expert Group will not have any decision-making powers.
28. The DEFRA Senior Officials Programme Board (SOPB) will act as the senior-decision making forum, considering recommendations made by the Four Nations Working Group, and arbiter in the case of disputes. The group will meet to discuss significant strategic issues or to facilitate dispute resolution.
29. 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

30. The Framework 's dispute resolution procedure is designed to facilitate a structured mechanism for the management of disagreements which may arise in terms of policy discussions.
31. 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. If a single party to the Framework considers a proposal to be unacceptable it may trigger the dispute resolution process.
32. If resolution cannot be achieved at the Four Nations Working Group, the issue 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. If the Four Nations Working Group considers that a potential policy change will result in an acceptable level of divergence, the matter will be passed to the SOPB for endorsement and it will be recommended that the IMG ratify the decision. The Framework document outlines that an agreement to disagree between parties may be an acceptable outcome.

Monitoring and Enforcement

34. The Framework will be reviewed initially one year after its commencement and thereafter on a 3-yearly basis to review its effectiveness, respective party compliance with its principles, whether divergences have taken place and what their impact has been.
35. 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.
36. 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

37. NI will have to maintain parity with Council Regulation (EC) No 834/2007 and EU Regulation 2018/848 under the auspices of the Protocol. However, the Common Framework document makes no reference in respect of NI's compliance with regulation 2018/848.

38. NI requires an independent competent authority from the rest of the UK given its status under the Protocol. DEFRA serves as the competent authority for Great Britain and a new entity, presently situated within DEFRA, has been created to act as the competent authority for NI: the "Northern Ireland Competent Authority."

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 identified a number of issues in respect of the Organic Production Common Framework which are of particular relevance for NI and in respect of how the Framework will function:

- There is a lack of consensus about the prospect of DEFRA facilitating an independent competent authority for NI in the long-term. While this may be beneficial in ensuring continuity of approach and information-sharing across the competent authorities representing NI and GB, there is a potential concern that the specific needs, interests and views of local Organic Producers may not be adequately addressed by DEFRA
- There is significant concern about the lack of resources made available by DAERA to support and develop Organic Production locally. In particular the absence of any permanently-employed advisors in this area, is alarming and is deficient when compared to support provided by other jurisdictions
- Given the significant gap in expertise in this field within DAERA currently, there is limited confidence from local producers about the Department's ability to represent their interests. Significant investment would need to be undertaken before any move in the future for DAERA to assume responsibility as the competent authority for local Organic Production
- Increasing the scope of Organic Production locally, and the number of certified producers, may facilitate a number of important benefits for the agricultural sector including improved carbon sequestration on holdings and greater self-sufficiency in terms of organic fertilizer use
- It is unclear if NI will be able to continue to utilise the EU organic brand label for products exported by local organic producers

- The need for local organic producers to comply with EU Regulation 2018/848 is causing operational and cost challenges, particularly the need to provide feed for poultry aged 18 weeks+ derived entirely from organic proteins because it is difficult to source this feed and it has a higher cost burden. Further, producers in GB do not have to comply with these regulations and this therefore places NI producers at a competitive disadvantage, particularly when most NI organic products are exported into the GB market
- There is the potential for future uncertainty for the internal Organic Production market if derogations are applied to certain organic goods within a GB administration(s), as it is unclear whether these items would be authorised for transit to NI, and then onwards to the Republic of Ireland (and therefore the EU Common Market)

41. DAERA did not highlight any issues of concern to the Committee in respect of the Common Framework.

42. 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

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

Framework:

- The Framework document notes that *“the Parties will continue to inform their respective legislatures, where appropriate, of developments in organic policy making”*, which is a positive acknowledgement for the need for continued parliamentary engagement. This should be considered for replication across all Common Frameworks
- The lack of reference in the Common Framework to NI’s continued compliance with EU Regulation 2018/848 is a significant oversight, particularly as this is causing significant operational challenges for local producers, and will likely continue to do so in the months ahead
- Consideration should be given to whether the UK Expert Group will have sufficient independence and autonomy from the Four Nations Working Group, given that its composition, terms of reference and scope will be determined by the Four Nations Working Group. This may or may not have implications for the objectivity of advice provided by the Expert 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 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 and indeed direct repetition of material on pages 8 and 9
- There appears to be a drafting error at page 14 which states *that "The dispute resolution mechanism will be triggered if agreement cannot be reached at the PCG"* – this appears to be a direct copy and paste from the Agri-Support Common Framework
- 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

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 benchmark its provision of resources to support Organic Production against other administrations and urgently consider the options to bolster its funded staffing complement in this area

- DAERA should liaise with DEFRA and set out the intended long-term plan for which entity will serve as the NI competent authority for Organic Production
- DAERA should, as a matter of urgency, liaise with DEFRA and other partners to escalate the issues being caused to local organic producers as a result of compliance with EU Regulation 2018/848 and seek via appropriate governance structures appropriate derogations
- 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 Organic Production policy to inform its views and participation in the Common Framework structure