



Northern Ireland
Assembly

Committee for Agriculture, Environment and Rural Affairs

Common Framework Position Paper Plant Health

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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 Plant Health 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 Plant Health 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
- **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:** Plant Health 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. Plant Health Common Framework

Scope

16. The Framework sets out a governance structure for administrations to discuss policy in respect of:
 - The importation and international movement of plants and plant products
 - Risk assessment of new plant pests and outbreak management
 - Exports of plants and plant products
 - Assurance and auditing of policies
17. It also facilitates a structure which will enable the parties (administrations in England, Scotland, Wales and NI) to discuss NI's continued compliance with EU law in respect of Plant Health as per the Protocol.
18. Parties are committed to joint ways of working in order to build a consistent approach to implementation of plant biosecurity. However, administrations are free to take differing approaches to the management of specific pests arising in their localities if there are mitigating circumstances.

Purpose

19. The overarching aim of the Framework is to provide a mechanism for administrations to discuss policy and strategies with a view to maintaining common rules across the UK whilst respecting the potential for divergence and the ability of a party to the Framework to take a different approach, providing that it is **technically justified** and consistent with the Framework principles.
20. Through the Framework parties will aim to establish a joint-strategic approach to tackling existing and future threats to plant health, developing pest risk analysis and exchanging information.
21. 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.

22. 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

23. The Framework will be delivered within a tiered governance structure:

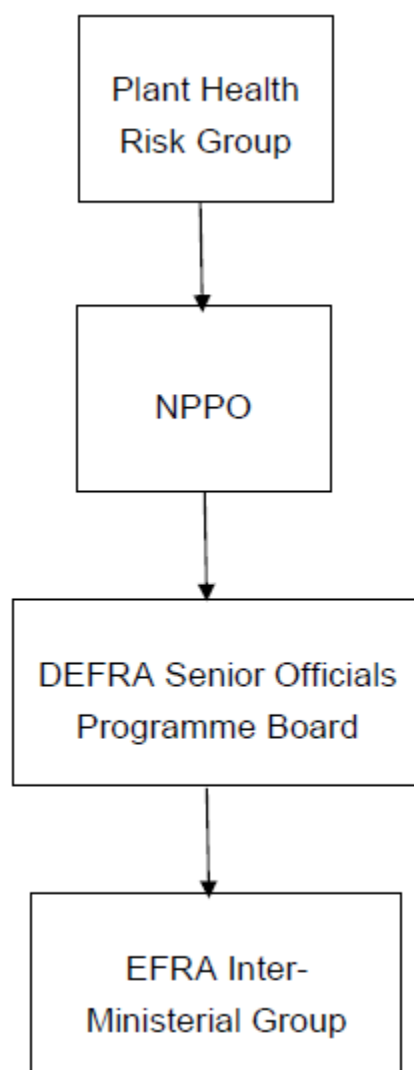
- The **Plant Health Risk Group (PHRG)**, comprising policy officials from all administrations, will be the primary decision-making body in respect of biosecurity policy, advising on technical matters relating to NI, assessing new and emerging threats, risk assessment practice and considering proposals/recommendations for divergence.

When considering the impacts of a potential policy divergence the PHRG will assess the consequences for plant protection, consumers and for international obligations.

The Framework requires a party (or parties) which wants to diverge from a *“four nations approach”* to seek a solution which is agreeable to all parties before pursuing the divergence and any potential dispute management procedure.

- The **National Plant Protection Organisation (NPPO)** will act as the strategic decision-making forum, ensuring that there is a collaborative direction of approach and that activities across jurisdictions are co-ordinated and aligned.
- The PHRG and NPPO will be supported by the Plant Health Policy Group which will meet to ensure the Framework is operating effectively

- **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

24. The Framework 's dispute resolution procedure is designed to facilitate a structured mechanism for the management of a proposal which is considered to be unachievable and not technically justified, creates an advantage/disadvantage of certain businesses geographically, conflicts with the policy of another Party, may compromise the internal market, or is contrary to international obligations (including the Protocol).
25. 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.
26. Issues should, in the first instance, be discussed at the Plant Health Risk Group to seek consensus but if this is not possible the matter should be referred to the NPPO.
27. If resolution cannot be achieved at the NPPO, 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.

Monitoring and Enforcement

28. The Framework will be reviewed continuously by the NPPO on a quarterly basis which will monitor the effectiveness of the Framework and if divergences have taken place and how they have been handled.
29. A periodic review will be carried out every 2 years (or more frequently if all parties are agreed) to assess the operability of the Framework and delivery of its aims. Independent third parties can be asked to contribute to the review, if agreed to by the parties.
30. 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.

31. 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

32. NI will have to maintain parity with the following EU legislation as a result of the Protocol:
 - EU Regulation 2016/2031 of the European Parliament of the Council of 26 October 2016 on protective measures against pests of plants
 - Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products
33. In essence, the EU’s plant health regime will continue to apply in NI, but the NI administration will have the authority and ability to implement specific measures in response to any specific risks which may arise locally.
34. The Framework obligates the NI administration, through DAERA, to *“work with partners in the UK Plant Health Service and Government of Ireland to evaluate and manage the risk of priority pests and diseases.”*
35. 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

36. The Committee has made a number of observations and recommendations below which should be considered in terms of finalising the Common Framework.
37. Through its engagement with stakeholders the Committee identified a number of issues in respect of the Plant Health Common Framework which are of particular relevance for NI and in respect of how the Framework will function:
- The Common Framework aspires to deliver two laudable, but fundamentally conflicting ideals, in terms of facilitating commonality of approach across jurisdictions but also enabling independent policy action
 - It is acknowledged that a uniform policy approach across domains will support greater profitability in the sector
 - There is significant concern about the lack of engagement with stakeholders and industry and hitherto there has been virtually no consultation with local representatives and DAERA about the functioning of the Common Framework
 - There is the potential for significant future divergences in policy between NI and GB given NI's requirement to adhere to Protocol regulations
 - There is a concern that NI growers may not be able to access new plant varieties and seeds in the future which may be developed in GB through techniques such as gene editing as it will have to maintain parity with EU regulations
 - There has been a significant impact on the plant/tree supply sector following introduction of the Protocol which has resulted in prohibitions on the transit of certain plant and tree species e.g., oak, beech and birch from NI to GB
 - Additionally, as a result of the introduction of additional paperwork on the transit of seeds, soft fruit and plants from GB into NI many suppliers in GB and/or haulage firms have stopped offering a transit service and therefore if NI growers and companies want to access these products, they have to travel to GB independently to collect them

- NI consumers are being affected negatively both in terms of choice, as there are fewer varieties of plants/seeds available locally than before introduction of the Protocol, and in terms of price as those suppliers which are continuing to transport goods into NI are passing on the additional costs of paperwork to customers
- Acquiring seeds and plant materials from GB for use in NI has become “*very challenging, very difficult and very bureaucratic*”
- The Common Framework as drafted will not offer any practicable solutions to businesses, traders and growers to overcome the barriers which have been introduced into the supply chain

38. DAERA did not highlight any issues of concern to the Committee in respect of the Common Framework, advising the Committee that “The framework content is in line with the principles agreed by the NI Executive in June 2020 and the framework has been agreed at official level by DEFRA and relevant policy areas across the Devolved Administrations.”

39. 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

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

- The provision to enable participation of independent third parties in the Framework's review and amendment procedures is positive and this should be considered for replication across all Common Frameworks
- The explicit obligation on parties to try and seek a resolution which is agreeable to all before pursuing a policy divergence which may result in a dispute is welcome and, again, similar provision should be included in all Common Framework documents
- The Plant Health Common Framework acknowledges the need for interaction between the NI administration and Government in the Republic of Ireland in respect of managing plant pests and diseases
- There is very little detail regarding the composition and role of the Plant Health Policy Group which will be responsible for advising and supporting both the Plant Health Risk Group and NPPO. For example, under representation it simply states "*Northern Ireland*"
- The Framework document suggests that secretariat support for the Plant Health Policy Group, Plant Health Risk Group and NPPO will be provided by DEFRA and there is no information about the chairing arrangements for these fora
- There is no information outlined about how frequently the groups formed under the auspices of the Framework will meet
- 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

41. 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, as a matter of urgency, engage with local industry stakeholders who have a key interest in Plant Health policy to scope their

views, concerns, needs and desires in respect of the functioning of the Common Framework

- DAERA should escalate through the appropriate governance structures the issues which have become manifest in the seeds and plant material supply chain as a result of the Protocol and the difficulties being experienced by NI consumers and businesses
- 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 Plant Health policy to inform its views and participation in the Common Framework structure