



**Committee for Agriculture, Environment and Rural Affairs**

## **Common Framework Position Paper Plant Varieties and Seeds**

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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 Varieties and Seeds 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 Varieties and Seeds 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:** Plant Varieties and Seeds 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 Varieties and Seeds Common Framework

### Scope

16. The Framework sets out a governance structure for administrations to discuss policy in respect of:
  - Intellectual Property rights of plant breeders
  - Plant variety registration
  - Standards for the marketing and certification of seed and other plant propagating material
17. All parties to the Framework are obligated to maintain minimum standards for seeds marketing as set out in legislation “*while allowing freedom for parties to flex above these standards in line with Framework principles.*”

### Purpose

18. 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:
  - The administration, management, control and enforcement of plant varieties, seeds and other plant propagating material
  - The administration of plant breeders’ rights for all of the UK and marketing of seeds and other material within each part of the UK
  - The furtherance of trade for all parts of the UK, including where divergence has resulted in a difference in trade priorities
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**

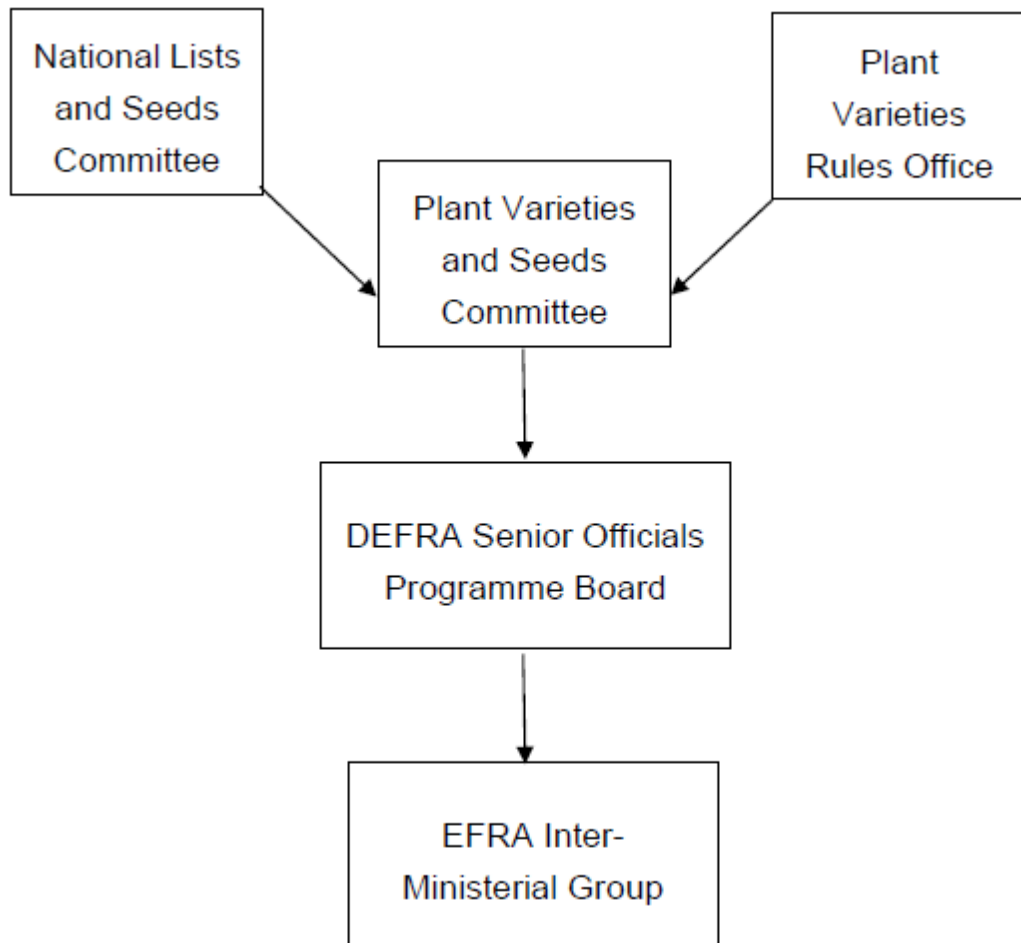
21. There are two primary decision-making fora under the auspices of the Common Framework comprising policy officials from all four UK jurisdictions:

- The **National Lists and Seeds Committee (NLSC)** is responsible for the variety registration regime across Great Britain and NI and has oversight for a range of technical sub-groups.
- The **Plants Varieties and Seeds Committee (PVSC)** acts as the senior-decision making group and is responsible for considering representations for registration (along with the NLSC) of new seeds/varieties, determining policy on legislative amendments, temporary derogations, equivalence standards and procuring services for plant breeders' rights. It also considers any recommendations or suggestions for policy divergence, and the associated impact.

When considering potential divergence(s), the PVSC will assess the consequences for the functioning of the internal market, international trade and other obligations.

Separately, the Plant Varieties Rules Office (PVRO) which is responsible for administering and dealing with UK Plant Breeders' Rights feeds into the PVSC.

- **DEFRA Senior Officials Programme Board (SOPB)** will act as the senior-decision making forum, considering recommendations made by the PVSC, 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.



22. It should be noted that the Common Framework explicitly states that DEFRA, along with the Scottish and Welsh Governments, has authority in respect of granting temporary derogations for access to market seeds which fall below minimum standards and considering applications from outside the British Isles for material to be considered as meeting an equivalent standard.
23. It does not appear that NI has any decision-making or influence in these matters.

### ***Dispute Resolution***

24. 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.

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. If a single party to the Framework considers a proposal to be unacceptable it may trigger the dispute resolution process.
26. Issues pertaining to technical issues and policy should, in the first instance, be tabled and discussed at the NLSC and PVSC respectively.
27. If resolution cannot be achieved, 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.
28. The Framework document outlines that the Dispute resolution process may only be triggered when genuine agreement cannot be reached and that an agreement to disagree between parties may be an acceptable outcome.

### ***Monitoring and Enforcement***

29. The Framework will be reviewed via an annual meeting between the PVSC and NLSC to review its effectiveness, respective party compliance with its principles, whether divergences have taken place and what their impact has been.
30. A periodic review will be carried out following the first six months of the commencement of the Framework and thereafter every 3 years to assess the operability of the Framework and delivery of its aims.
31. 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.
32. 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***

33. NI will have to maintain parity with EU law on plant/seed variety registration and marketing material. Products for sale in NI must be on the NI Variety List or EU Common Catalogue, which is a separate list from that used in England, Wales and Scotland.
34. 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

35. The Committee has made a number of observations and recommendations below which should be considered in terms of finalising the Common Framework.
36. Through its engagement with stakeholders the Committee identified a number of issues in respect of the Plant Varieties and Seeds 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

37. DAERA did not highlight any issues of concern to the Committee in respect of the Common Framework, advising that “in general, the Framework should present an effective structure for the protection of UK plant breeder’s rights and for setting standards for the marketing of seed and plant propagating material, including certification and variety listing, in the UK following the UK’s departure from the European Union. It builds on existing highly functional governance structures and working arrangements. It should therefore provide a flexible and adaptable basis for future cooperation and coordination between the four administrations while respecting the devolution settlement and potential for divergence.”

38. 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

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

- One of the stated policy objectives of the Parties to the Framework is to deliver: *“A functioning internal UK market for the marketing of seed and other plant propagating material including a joint GB/NI approach on variety registration.”* It is difficult to foresee how this can be realistically achieved given that NI will be legally required to follow a different registration scheme to the rest of the UK
- It is unclear why administrations in GB have collective authority for granting temporary derogations for market seeds which do not meet minimum standards and considering applications from outside of the British Isles for material to be considered as equivalent. Products derived from these seeds may ultimately end up in the NI market and so it would be reasonable to consider the views of the NI administration in terms of decision-making
- The Terms of Reference of the main decision-making groups included in the Framework such as the PVSC, NLSC and PRVO are not included in the document
- There is very little detail regarding the composition and role of the various technical sub-groups which will feed into, and advise, the PVSC which limits the ability to scrutinise effectively how these fora will function
- 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

40. It is recommended that:

- DAERA should forward the Committee's observations and recommendations to the Cabinet Office 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 Varieties and Seeds 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 work with partners in GB to scope whether it would be of utility to have its views considered in decision-making in respect of temporary derogations for market seeds which are deemed to be below minimum standard and applications for equivalence from outside the British Isles
- 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 Varieties and Seeds policy to inform its views and participation in the Common Framework structure