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SPICe Briefing

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Plant Health Common Framework

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This briefing discusses the Plant Health Common Framework. It sets out how the UK Government and devolved governments propose to work together on plant health policy. It also provides background information on the common frameworks programme.

Common
Framework

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Summary

This briefing provides detailed information on the Plant Health Common Framework. The Rural Affairs, Islands and Natural Environment (RAINE) Committee will lead on scrutiny of this framework.¹

The Plant Health framework covers policy governed by retained EU law and international arrangements. The framework is a non-legislative agreement formalising ways of working between the four governments on plant health policy. The framework sets out the scope of the policy area, the roles and responsibilities of parties to the framework, as well as the mechanisms for monitoring, review, amendment, and dispute resolution.

Background information on, for example, what common frameworks are and how they have been developed is also provided in this paper.

The [SPICe common frameworks hub](#) collates all publicly available information on frameworks considered by committees of the Scottish Parliament.

In session five, the Finance and Constitution Committee [reported](#) on common frameworks and recommended that frameworks should include the following:

- their scope and the reasons for the framework approach (legislative or non-legislativeⁱ) and the extent of policy divergence provided for;
- decision making processes and the potential use of third parties;
- mechanisms for monitoring, reviewing and amending frameworks including an opportunity for Parliamentary scrutiny and agreement;
- the roles and responsibilities of each administration; and
- the detail of future governance structures, including arrangements for resolving disputes and information sharing

The [Scottish Government's response](#) highlighted that there may be a "range of forms" which frameworks could take.

More detail on the background to frameworks is available in a [SPICe briefing](#) and also in a [series of blogs](#) available on SPICe spotlight.

ⁱ This categorisation was dropped in the [2021 Frameworks analysis](#), which reported that all frameworks will now be non-statutory intergovernmental agreements, and that the previously-used categories of "legislative" and "non-legislative" frameworks have been renamed as "frameworks with associated primary legislation" and "frameworks with no associated primary legislation" respectively.

What are common frameworks?

A common framework is an agreed approach to a particular policy, including the implementation and governance of it. The aim of common frameworks is to manage divergence in order to achieve some degree of consistency in policy and practice across UK nations in areas formerly governed by EU law.

In its [October 2017 communique on common frameworks](#), the Joint Ministerial Committee (EU Negotiations) (JMC (EN)) stated that:

“ A framework will set out a common UK, or GB, approach and how it will be operated and governed. This may consist of common goals, minimum or maximum standards, harmonisation, limits on action, or mutual recognition, depending on the policy area and the objectives being pursued. Frameworks may be implemented by legislation, by executive action, by memorandums of understanding, or by other means depending on the context in which the framework is intended to operate.”

[Joint Ministerial Council \(EU Negotiations\), 16 October 2017](#), Common Frameworks: Definition and Principles

The [Scottish Government indicated in 2019](#) that common frameworks would set out:

- the area of EU law under consideration, the current arrangements and any elements from the policy that will not be considered. It will also record any relevant legal or technical definitions.
- a breakdown of the policy area into its component parts, explain where the common rules will and will not be required, and the rationale for that approach. It will also set out any areas of disagreement.
- how the framework will operate in practice: how decisions will be made; the planned roles and responsibilities for each administration, or third party; how implementation will be monitored, and if appropriate enforced; arrangements for reviewing and amending the framework; and dispute resolution arrangements.

However, the Food and Feed Safety and Hygiene Law framework outline considered by the session five Health and Sport Committee noted that:

“ the framework itself is high level and commits all signatories to early, robust engagement on policy changes within scope.”

[Framework Outline Agreement and Concordat](#), 30 November 2020

The framework outline went on to note that the framework:

“ is intended to facilitate multilateral policy development and set out proposed high level commitments for the four UK Administrations. It should be viewed as a tool that helps policy development, rather than a rigid template to be followed.”

As such, it is likely that there will be significant variation between frameworks in terms of whether they set policy or set out how decisions on policy within the scope of the framework will be taken.

There are, however, similarities between frameworks in terms of their overall structure, with the agreements setting out the roles and responsibilities for parties to the framework,

how the framework can be reviewed and amended, and how disputes are to be resolved.

Why are common frameworks needed?

During its membership of the European Union, the UK was required to comply with EU law. This means that, in many policy areas, a consistent approach was often adopted across all four nations of the UK, even where those policy areas were devolved.

On 31 December 2020, the transition period ended, and the United Kingdom left the EU single market and customs union. At this point, the requirement to comply with EU law also came to an end. As a result, the UK and devolved governments agreed that common frameworks would be needed to avoid significant policy divergence between the nations of the UK, where that would be undesirable.

The [Protocol on Ireland/Northern Ireland](#) was signed as part of the UK-EU Withdrawal Agreement and ratified in UK law by the [EU Withdrawal \(Agreement\) Act \(2020\)](#). The Protocol requires that Northern Ireland aligns with a limited set of EU laws relating to the Single Market for goods and the Customs Union. The [Northern Ireland Protocol Bill](#) was introduced to the UK Parliament on 13 June 2022. If passed, the Bill may affect the requirement for Northern Ireland to align with EU regulations of goods. In addition, policy positions (or framework governance arrangements) set out in this Common Framework briefing may also be affected.

The Joint Ministerial Committee (JMC) was a set of committees that comprised ministers from the UK and devolved governments. The JMC (EU Negotiations) sub-committee was created specifically as a forum to involve the devolved administrations in discussion about the UK's approach to EU Exit. Ministers responsible for Brexit preparations in the UK and devolved governments attended these meetings.

In October 2017, the JMC (EN) [agreed an underlying set of principles to guide work in creating common frameworks](#). These principles are set out below.

1. Common frameworks will be established where they are necessary in order to:
 - enable the functioning of the UK internal market, while acknowledging policy divergence;
 - ensure compliance with international obligations;
 - ensure the UK can negotiate, enter into and implement new trade agreements and international treaties;
 - enable the management of common resources;
 - administer and provide access to justice in cases with a cross-border element; and
 - safeguard the security of the UK.
2. Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:
 - be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;
 - maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory, as is afforded by current EU rules; and
 - lead to a significant increase in decision-making powers for the devolved administrations.

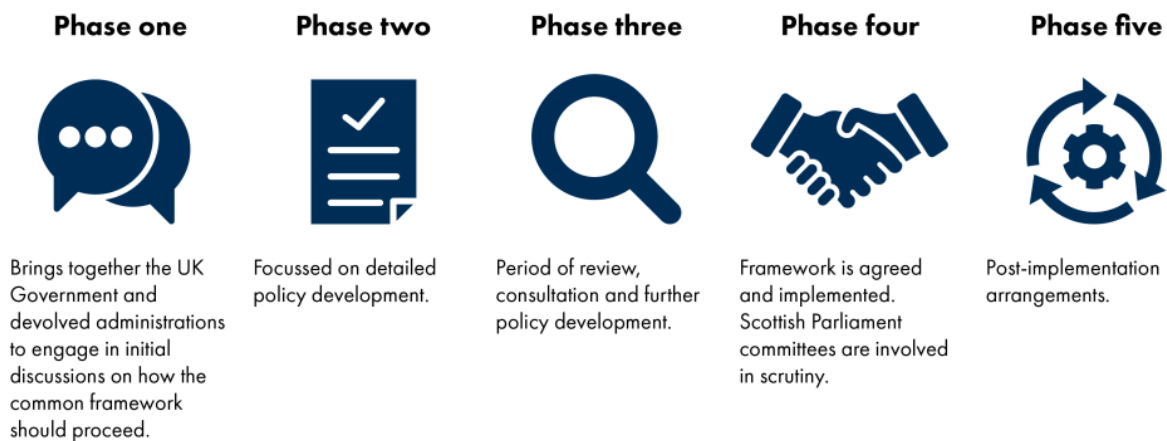
What is the process for developing frameworks ?

Frameworks are inter-governmental agreements between the UK Government and the devolved administrations.

They are approved by Ministers on behalf of each government prior to being sent to all UK legislatures for scrutiny. [The UK Government Cabinet Office](#) is coordinating the work on developing common frameworks.

Common frameworks go through four phases of development before implementation at phase five. The stages are set out below. The parliament receives frameworks for scrutiny at phase four.

Common framework development



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How will the Scottish Parliament consider frameworks?

Frameworks which have reached phase four are available to be considered by the Scottish Parliament. Subject committees can consider frameworks which sit within their policy areas.

Each legislature in the UK can consider common frameworks. Issues raised by legislatures during this scrutiny are fed back to their respective government. Governments then consider any changes which should be made to frameworks in light of scrutiny by legislatures before implementing the framework. Changes in light of scrutiny are not, however, a requirement.

The Constitution, Europe, External Affairs and Culture Committee has an oversight role in relation to frameworks and will lead on cross-cutting issues around transparency, governance and ongoing scrutiny.

The Scottish Government has previously acknowledged the ongoing role of the Scottish Parliament in relation to frameworks:

“ Consideration will also need to be given to what role the Parliament might have in the ongoing monitoring and scrutiny of frameworks post-implementation.”

[Scottish Government response](#) to the session five Finance and Constitution Committee report on common frameworks, June 2019

The Scrutiny Challenge

The way in which common frameworks have been developed and will operate raises some significant scrutiny challenges for the Scottish Parliament.

- Common frameworks are intergovernmental agreements and the scope for parliamentary influence in their development is significantly limited with scrutiny taking place at phase four.
- The ongoing operation of frameworks will take place at an official level between government departments. It is therefore unclear how much information the Parliament may be able to access to scrutinise the effect of frameworks on policy-making.
- The Scottish Government and the UK Government have differing objectives in relation to frameworks. The UK Government is seeking “high levels of regulatory coherence”.² The Scottish Government believes that they are about “allowing legitimate policy choices”.²
- The interconnected nature of common frameworks and the UK Internal Market Act 2020 (see section on the [UK Internal Market Act](#)).
- The impact of common frameworks on the Scottish Government’s stated policy position of keeping pace with EU law.
- The fact that most frameworks have been operating on an interim basis since 1

January 2021 in spite of being unavailable for scrutiny by legislatures³.

The [legacy expert panel report](#) to the session five Finance and Constitution Committee noted these scrutiny challenges. The Committee had previously recommended that the Scottish Government should have to report on the operation of each common framework, noting interactions with cross-cutting issues such as keeping pace with EU law, on an annual basis.

Scrutiny at other legislatures

This section provides information on scrutiny of the framework at other legislatures.

The framework is currently being considered by the [Senedd Economy, Trade and Rural Affairs Committee](#).

House of Lords Common Frameworks Scrutiny Committee

The House of Lords Common Frameworks Scrutiny Committee considered the framework on 11 March 2022. In an exchange of letters with the [Secretary of State for Environment, Food and Rural Affairs, George Eustice MP](#), the Committee raised concerns about the framework and [produced a final list of recommendations](#) relating to:

- clarification on the [roles and responsibilities of working groups](#);
- the [dispute resolution process](#);
- reference to the [Internal Market Act's exclusion process](#);
- a commitment to [update legislatures on the functioning of the framework](#); and
- increased cross-border communication and cooperation with the Republic of Ireland.

House of Commons Environment, Food, and Rural Affairs Committee

At the time of writing, [the framework is being considered by the House of Commons' Environment, Food, and Rural Affairs Committee](#) alongside others in the remit of the UK Government Department of Environment, Food and Rural Affairs. [In a letter to George Eustice MP](#), Secretary of State for Environment, Food and Rural Affairs, dated 8 June 2022, the Committee asked for clarification on the UK Government's views on policy divergence and expressed concern about provisions for stakeholder engagement.

Northern Ireland Assembly Committee for Agriculture, Environment, and Rural Affairs

The Northern Ireland Assembly's Committee for Agriculture, Environment and Rural Affairs published its [position paper at the end of the 2017-22 mandate](#). The Committee agrees with many of the concerns voiced by committees at other legislatures, but also notes several issues specific to Northern Ireland. These include the effects of current and anticipated future levels of divergence as well as a lack of regulatory oversight. For instance, the Committee states:

“

- 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”

The Committee also drew attention to the role a paragraph in the framework documents about mechanisms that will be used 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”

The Committee expressed concerns that this paragraph "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 Committee made a number of recommendations to address their concerns. These include the request that "DAERA [Northern Ireland Executive's Department of Agriculture, Environment and Rural Affairs] 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."

The position paper also noted that the Northern Ireland Assembly Committee wrote to the House of Lords Common Frameworks Scrutiny Committee in December 2021 (this correspondence is not published). The position paper indicates the Northern Ireland Assembly Committee and House of Lords Common Frameworks Scrutiny Committee share concerns across frameworks in the following areas:

- a lack of apparent engagement with the Irish government in respect of common frameworks and implications for North-South policy interaction;
- a lack of engagement with community and voluntary stakeholders in Northern Ireland to seek their views on common frameworks; and
- how the [Subsidy Control Act 2022](#) will overlap with and impact on common frameworks which deal with subsidies.

The UK Internal Market Act 2020

The [UK Internal Market Act 2020](#) was introduced in the UK Parliament by the UK Government in preparation for the UK's exit from the EU. The Act establishes [two market access principles](#) to protect the flow of goods and services in the UK's internal market.

1. The principle of mutual recognition, which means that goods and services which can be sold lawfully in one nation of the UK can be sold in any other nation of the UK.
2. The principle of non-discrimination, which means authorities across the UK cannot discriminate against goods and service providers from another part of the UK.

The Act means that the market access principles apply even where divergence may have been agreed in a framework.

The introduction of the UK Internal Market Act had a significant impact on the common frameworks programme because of the tension between the market access principles contained in the Act and the political agreement reached that "common frameworks would be developed in respect of a range of factors, including "ensuring the functioning of the UK internal market, *while acknowledging policy divergence*".ⁱⁱⁱ

UK Government Ministers have the power to disapply the market access principles set out in the Act where the UK Government has agreed with one or more of the devolved governments that divergence is acceptable through the common frameworks process.

Although UK Ministers can disapply the market access principles in such circumstances, they are not legally obliged to do so.

On 2 December 2021, [Angus Robertson MSP, Cabinet Secretary for Constitution, External Affairs and Culture](#) wrote to the [Convener of the Constitution, Europe, External Affairs and Culture Committee](#) to give an update on the common frameworks programme.

The letter indicated that at a recent Ministerial quadrilateral, agreement had been reached between the UK Government and the Scottish Government and other devolved administrationsⁱⁱⁱ on an approach to "securing exemptions to the Act for policy divergence agreed through common frameworks".

ii [After Brexit: The UK Internal Market Act and Devolution](#), Scottish Government, 8 March 2021. Note that footnote 27 in this document provides an incorrect reference. The correct reference is [JMC \(EN\) Communiqué, 16 October 2019](#).

iii See [letter from the Counsel General and Minister for the Constitution to the Senedd's Legislation, Justice and Constitution Committee dated 25 November 2021](#).

“ The meeting agreed an approach to securing exemptions to the Act for policy divergence agreed through common frameworks, and endorsed the text of a statement that UK Ministers will shortly make to the House of Commons. This will give effect to firm commitments made to the UK Parliament during the passage of the Bill that “...divergence may occur where there is agreement under a common framework, and that such divergence could be excluded from the market access principles. Regulations to give effect to such an agreement can be made under Clauses 10 and 17. In those cases, the Secretary of State would be able to bring to the House a statutory instrument to exclude from the market access principles a specific agreed area of divergence. This would follow consensus being reached between the UK Government and all the relevant parties that this is appropriate in respect of any specific defined topic within a common framework.”

[Letter from the Cabinet Secretary for Constitution, External Affairs and Culture](#), 2 December 2021

Process for considering UK Internal Market Act exclusions in common framework areas

The UK Government and devolved administrations have agreed a process for considering exclusions to the market access principles of the UK Internal Market Act 2020. The [process](#) was published on 10 December 2021.

The process requires that if a [party to the framework](#) wishes to seek an exclusion to the market access principles, it must set out the scope and rationale for this. The proposed exclusion is then considered by the appropriate framework forum, taking into account evidence including about the likely direct and indirect economic impact of the proposed exemption. If the exemption is agreed, it is for UK Ministers to introduce a draft instrument to the UK Parliament to give effect to the exclusion. The UK Parliament will then consider the draft instrument.

The process is set out in full below. ⁴

Proposal and consideration of exclusions

1. Sections 10 and 18 and Schedules 1 and 2 of the UK Internal Market Act contain provisions excluding the application of the United Kingdom market access principles in certain cases.
2. Whenever any party is proposing an amendment to those Schedules in areas covered by a Common Framework:
 - a. the exclusion seeking party should set out the scope and rationale for the proposed exclusion; and
 - b. consideration of the proposal, associated evidence and potential impact should be taken forward consistent with the established processes as set out in the relevant Common Framework, including an assessment of direct and indirect economic impacts.
3. It is recognised that all parties will have their own processes for considering policy proposals. Administrations should consult and seek agreement internally on their position before seeking to formally agree the position within the relevant Common Frameworks forum.

Agreement of an exclusion request

4. Where policy divergence has been agreed through a Common Framework this should be confirmed in the relevant Common Framework forum. This includes any agreement to create or amend an exclusion to the UKIM Act 2020's market access principles.
5. Evidence of the final position of each party regarding any exclusion and whether an agreement has been reached should be recorded in all cases. This could take the form of an exchange of letters between appropriate UK Government and Devolved Administration ministers and include confirmation of the mandated consent period for Devolved Administration ministers regarding changes to exclusions within the Act.
6. Parties remain able to engage the dispute resolution mechanism within the appropriate Common Framework if desired.

Finalising an exclusion

7. Under section 10 or section 18 of the UK Internal Market Act 2020 amendments to the schedules containing exclusions from the application of the market access principles require the approval of both Houses of the UK Parliament through the affirmative resolution procedure. Where agreement to such an exclusion is reached within a Common Framework, the Secretary of State for the UK Government department named in the Framework is responsible for ensuring that a draft statutory instrument is put before the UK Parliament.

Plant Health

The Plant Health provisional Common Framework ("the framework") has reached phase four and has, as such, been received by the Scottish Parliament for scrutiny. Scrutiny will be undertaken by the Rural Affairs, Islands and Natural Environment (RAINE) Committee.

The framework has also been received by other UK legislatures. This briefing is intended to facilitate scrutiny of the framework by the Scottish Parliament.

Policy Area

Plant health policy includes:

- requirements for the import into, internal movement of, and export of, plants and plant products (including wood and wood products) within the UK;
- the risk assessment, surveillance, and outbreak management of new plant pests;
- the assurance and auditing of policies across Great Britain to protect plant biosecurity.

Scope

Plant health is a devolved matter. The framework applies to retained EU law in the plant health policy area. Plant health is in the scope of the Protocol on Ireland and Northern Ireland . This means that Northern Ireland must continue to align with EU law in these areas.^{iv}

The elements of EU law that intersected with devolved competence in this policy area include:

- [Regulation \(EU\) 2016/2031](#) on protective measures against pests of plants (the 'Plant Health Regulation' or 'PHR').
- [Regulation \(EU\) 2017/625](#) 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 (the 'Official Controls Regulation' or 'OCR').

The framework documents note that decisions made within the framework should respect the devolution settlements and be in line with the UK's trade and international obligations, including those under the International Plant Protection Convention (IPPC), WTO requirements, and trade agreements to which the UK is a party.

The framework notes that it is without prejudice to the [Plant Varieties and Seeds Common Framework](#) and the [Memorandum of Understanding for the Cross-Border provision of Forestry Functions including Research Delivery and Plant Health \(forestry\)](#).^v The UK Plant

^{iv} The Northern Ireland Protocol Bill was introduced to the UK Parliament on 13 June 2022. If passed, the Bill may affect the current requirement for regulatory alignment between Northern Ireland and the EU.

^v The Memorandum of Understanding for the Cross-Border provision of Forestry Functions including Research Delivery and Plant Health (forestry) sets out the details of the governance, commissioning and funding arrangements agreed

Varieties and Seed Framework focuses on variety registration and marketing but shares some stakeholders with the (Plant Health) framework.

The [covering material for the framework sent to the RAINE Committee on 7 February 2022](#) also states:

“ The Framework has some connections with the Common Framework on Plant Varieties and Seeds in respect of shared functions (market access) and working groups on plant material where there are both plant health and PVS regulatory requirements (i.e., Forest Reproductive Material, seed potatoes and fruit material).”

The framework notes that fees and charges, and sanctions are an area "where no further action is thought to be needed". Parties to the framework will be able to establish its own fees and charges for services delivered. Northern Ireland will remain under the EU regime for fees and charges.

Northern Ireland Protocol

[Annex 2 of the Protocol on Ireland/Northern Ireland](#) sets out the EU law that applies to Northern Ireland in the plant health policy area.^{vi} As such, the following paragraphs from Annex 2 are relevant to this framework:

“ Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community”

“ Regulation (EU) 2016/2031 of the European Parliament of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC”

UK Government, 2020⁵

The framework is UK-wide and is intended to accommodate the specific circumstances in Northern Ireland that arise as a result of the Protocol. The governance structures and decision making processes outlined in the framework are, the framework states, intended to allow for the full participation of Northern Ireland in the event policy changes are proposed. This may be when the UK or devolved governments propose policy changes that have "regulatory implications for the rest of the UK" or when the rules in Northern Ireland change with EU alignment. It is not clear from the framework documents what policy changes would have regulatory implications for the other Parties to the framework. Northern Ireland Executive Ministers will be able to trigger a review of an issue as part of the [framework dispute resolution process](#) in the event that they have concerns over GB-wide proposals which they feel have not been satisfactorily addressed.

between the Scottish, Welsh and UK Governments and the Forestry Commission. It is GB-wide.

^{vi} The Northern Ireland Protocol Bill was introduced to the UK Parliament on 13 June 2022. If passed, the Bill may affect the current requirement for regulatory alignment between Northern Ireland and the EU.

EU-UK Trade and Cooperation Agreement

The policy area covered by the framework intersects with the [EU-UK Trade and Cooperation Agreement \(TCA\)](#) and therefore topics relevant to the framework may be considered from time to time by relevant TCA Specialised Committees or the Partnership Council.^{vii}

The TCA intersects with this Framework in the following key areas including:

- Article 75: import conditions and procedures
- Article 77: transparency and exchange of information
- Article 78: adaption to regional conditions
- Article 80: notifications and consultation

The framework states:

“ Where a UK-EU meeting agenda includes an item concerning implementation in an area of devolved competence, UKG should facilitate Scottish Government, Welsh Government and Northern Ireland Executive attendance of a similar level to that of the UKG representatives with final discretion as to the UK delegation a matter for the UK co-chair. UKG should engage the Scottish Government, Welsh Government and Northern Ireland Executive as fully as possible in preparation for these meetings regardless of attendance, and on all relevant implementation matters.”

International Trade

The UK is an independent World Trade Organisation (WTO) member. Cross-departmental processes have been developed by Defra to ensure that all nations of the UK fulfil the UK's WTO obligations, including consulting stakeholders on [Sanitary and Phytosanitary measures \(SPS\)](#).^{viii} The framework notes that notifications to the WTO are to be coordinated through the [Plant Health Policy Group](#).

The [International Plant Protection Convention \(IPPC\)](#) is an international treaty that aims to protect plant resources from pests and promote safe trade. It is recognised by the WTO SPS Agreement.

While plant health policy areas are devolved matters, international trade is reserved. This creates an area of overlapping interests where UK trade negotiations and implementation may intersect with devolved matters. It is the responsibility of the UK Government to ensure that the UK complies with its international trading obligations. International trade agreements may also set out measures on SPS checks for plants and plant products. The framework notes:

vii The Partnership Council is the EU-UK body which oversees the TCA Agreement. Beneath the Partnership Council, a number of Specialised Committees and working groups have been established to oversee particular elements of the Agreement.

viii Sanitary (human and animal health) and phytosanitary (plant health) governance refers to measures intended to ensure food is safe for consumers and prevent the spread of pests or diseases among animals and plants.

“ There is regular engagement between the Scottish Government, Welsh Government, Northern Ireland Executive, Trade Officials and Defra counterparts on Rest of World (RoW) and EU trade negotiations through Defra's EU and RoW Trade Engagement Group. This group provides a forum for detailed discussions between the participants on trade agreement topics relevant to the environment, food and rural affairs policy portfolio. These discussions include relevant policy specialists from all four governments. Input at these discussions feed into UK Government negotiating positions.”

Where international trade may have an impact on managing policy divergence between the UK nations, the framework is intended to allow the parties (i.e. the four governments) to consider any implications stemming from international trade which have a direct bearing on the operation of the framework.

Definitions

The framework lists the following definitions:

- APHA: Animal Plant Health Agency (executive agency of Defra)
- CD: Crown Dependency (Guernsey, Jersey, Isle of Man)
- CPHO: Chief Plant Health Officer
- DG: Devolved Government
- DAERA: Department of Agriculture, Environment and Rural Affairs (Northern Ireland)
- GB: Great Britain (England, Scotland, Wales)
- NGOs: Non-government organisations
- NI Protocol: Northern Ireland Protocol
- SASA: Science and Advice for Scottish Agriculture (a division of the Scottish Government Agriculture and Rural Economy Directorate)
- UK: United Kingdom (England, Scotland, Wales, Northern Ireland)
- UKG: UK Government
- UKNPPO: UK National Plant Protection Organisation
- UKPHRG: UK Plant Health Risk Group

Summary of proposed approach

The framework comprises of non-legislative mechanisms that set out arrangements for joint working across the UK Plant Health Service (see [Roles and Responsibilities](#) for further information).^{ix} The framework is intended to facilitate multilateral policy

development and set out proposed high level commitments for the UK Government, Scottish Government, Welsh Government, the Northern Ireland Department for Agriculture, Environment and Rural Affairs (DAERA), and Forestry Commission (a non-ministerial government department responsible for the management of publicly owned forests and the regulation of both public and private forestry in England). The framework notes that *"it should be viewed as a tool that helps policy development, rather than a rigid template to be followed"* and that it *"may be developed iteratively, and amended and added to by policy teams as discussions progress"*.

The framework, alongside relevant retained EU law, is intended to help to maintain common rules to protect plant health, facilitate international trade, and allow for trade in regulated plant material within and between the UK nations. The framework also includes trade in [Qualifying Northern Ireland Goods \(QNIGs\)](#) from Northern Ireland to Great Britain and trade in regulated plant material between the Crown Dependencies^x and Great Britain. The framework notes that it is respecting of the potential for policy divergence so long as the divergence is *"technically justified and consistent with the JMC(EN) Principles"*. There is no indication in the framework documents as to what may constitute technically justified divergence.

Stakeholder engagement

The [covering material for the framework sent to the RAINE Committee on 7 February 2022](#), set out the stakeholder engagement that has taken place in the development of the framework. The covering material states:

“ Stakeholders received a Technical Engagement Summary of the Plant Health Framework for consideration and comment in November 2020. Stakeholders were also given the opportunity to provide feedback at a special meeting of the UK Plant Health Advisory Forum on 24 November 2020 specifically on the Summary document. Feedback has been supportive and there have been no specific issues or concerns raised. Further engagement with Stakeholders will be undertaken after publication of the Framework.”

Detailed overview of proposed framework: legislation

This section provides information on the legislation associated with the framework.

The [framework documents received by the RAINE Committee on 7 February 2022](#) set out the legislation associated with the policy area.

ix The framework indicates that the UK Plant Health Service comprises Defra, together with the Forestry Commission and the Scottish Government, Welsh Government and the Northern Ireland Executive.

x The Crown Dependencies are three island territories in the British Islands that are self-governing possessions of the British Crown: the Bailiwick of Guernsey, the Bailiwick of Jersey, and the Isle of Man.

Relevant Legislation

- UK Primary Legislation
 - [The Plant Health Act 1967](#)
- Retained EU Law
 - [The Plant Health \(Amendment, etc\) \(EU Exit\) Regulations 2020](#)
 - [The Plant Health \(Phytosanitary Conditions\) \(Amendment\) \(EU Exit\) Regulations 2020](#)
 - [The Official Controls \(Animals, Feed and Food, Plant Health, etc\) \(Amendment\) \(EU Exit\) Regulations 2020](#)
 - [The Plant Health \(Amendment\) \(EU Exit\) Regulations 2021](#)
- Domestic Legislation
 - Scotland: [The Plant Health \(Official Controls and Miscellaneous Provisions\) \(Scotland\) Regulations 2019](#)
 - Wales: [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) Regulations 2020](#)
 - England: [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(England\) Regulations 2019](#)
 - Northern Ireland: [Plant Health \(Official Controls and Miscellaneous Provisions\) Regulations \(Northern Ireland\) 2020](#)

Detailed overview of proposed framework: non-legislative arrangements

The framework comprises of several non-legislative arrangements. These include [Joint Decision-Making Mechanisms](#), [Dispute Resolution Processes](#), [Framework Monitoring](#), and [Review and Amendment Mechanisms](#). A Concordat between the UK Government, Scottish Government, Welsh Government, and Northern Ireland Executive is also appended to the framework. This Concordat sets out agreements on the above non-legislative arrangements.

The framework also sets out:

- [Policy Objectives](#)
- [High Level Principles](#) for four government working
- [Risk-Based Approach](#) to protect UK biosecurity.

Policy Objectives

The stated policy aim of the framework is to maintain common rules to protect plant health across UK and facilitate trade in regulated plant material within Great Britain and between Northern Ireland and Great Britain, whilst "*respecting the potential for divergence*". This aim is supported by agreed policy objectives.

The policy objectives set out in Annex 1 of the framework are:

1. The adoption of common rules affecting the movement of regulated plant material within England, Scotland, and Wales and, where appropriate Northern Ireland.
2. A single UK Government, Scottish Government, and Welsh Government import regime for regulated plant material.
3. Consideration of divergence (including technical justification and enabling the functioning of the UK internal market).
4. Timely implementation of changes in UK Government, Scottish Government, Welsh Government, and Northern Ireland Executive policy on regulated plant material and pests to protect the Great Britain/United Kingdom biosecurity.
5. Timely responses to pest outbreaks.
6. The adoption of plant health measures in a manner that is consistent with the UK's international obligations.
7. Effective and bio-secure arrangements for the trade between Northern Ireland and Great Britain.
8. Effective and bio-secure arrangements for trade in regulated plant material.

High Level Principles

Annex 2 of the framework sets out high-level principles for how the UK and devolved governments will work together and co-operate in relation to returned EU powers that intersect with areas of devolved competence. The following High Level Principles are stated in the framework.

High level principles

All governments to work collaboratively and in partnership, and agree the importance of preserving the principles agreed by the Joint Ministerial Committee (EU Negotiations) (JMC (EN)) Communiqué in October 2017 for the establishment of Common Frameworks to:

1. Enable the functioning of the UK internal market, while acknowledging policy divergence.
2. Ensure compliance with international obligations.
3. Ensure the UK can negotiate, enter into and implement new trade agreements and international treaties.
4. Enable the management of common resources.

Respect will be paid to the devolution settlements and the democratic accountability of the devolved governments, including the provisions of the Belfast/Good Friday Agreement and encompassing the North/South dimension in Strand 2 of that Agreement. Current devolution arrangements will be preserved and enhanced.

The Framework enables the identification, assessment, management, control and enforcement of plant health risks using co-ordinated procedures based on a common set of plant health rules across GB/UK whilst recognising the ability for policy divergence where technically justified or based on EU legislative divergence as it applies to Northern Ireland and in line with WTO/SPS requirements and/or trade agreements to which the UK is a party.

Without prejudice to data protection requirements and intellectual property considerations, the governments will share information, survey data and scientific research in a spirit of openness and transparency, and to facilitate effective operation of the framework to protect plant health.

The governments may establish information/data sharing protocols, including transferring data on notifications and inspections carried out at points of first arrival in order to prevent barriers to trade.

The Framework serves the protection of plant health within GB/UK, as well as for GB/UK as a whole, through co-operation and collaboration, including in areas where a different policy approach has been taken, or is required.

The Framework serves the continuation of trade for all parts of the UK including those where priorities for one or more nations differ.

The dispute resolution process should be utilised only when genuine agreement cannot be reached, such as where divergence would impact negatively on the ability to meet the JMC (EN) principles.

As set out in the dispute resolution process, any Party to the framework can seek legal counsel. In the unlikely event of the dispute resolution process being necessary, and if legal counsel is sought, all parties agree to give due consideration to the findings of advice from legal counsel or other sources. This consideration will be

included when making recommendations to their Chief Plant Health Officer, senior officials or Ministers to inform decision making and resolution of the dispute.

Risk-Based Approach

The framework indicates that it intends to maintain a risk-based approach to protect biosecurity whilst facilitating trade and sustainable economic growth.

This risk-based approach is to ensure that *"effort is based on an assessment of the overall costs and benefits to society thereby ensuring that intervention to protect plants from new pests and diseases are proportionate and targeted to make best use of the resources available"*.

Plant Health in practice

Roles and Responsibilities: parties to the framework

This section sets out the roles and responsibilities of each party to the framework.

The Parties to the framework include:

- UK Government Department of Environment, Food and Rural Affairs (Defra)
- Scottish Government
- Welsh Government
- Northern Ireland Department for Agriculture, Environment and Rural Affairs (DAERA)

UK Plant Health Service

The UK Plant Health Service is referred to throughout the framework documents and is stated to comprise of the parties to the framework (i.e. Defra, together with the Forestry Commission and the Scottish Government, Welsh Government and the Northern Ireland Executive). However, it does not appear to be a body supported by a Terms of Reference.

The UK Plant Health Service is stated to work to ensure that the views of all parties are taken into account in dealings with international bodies, non-EU third countries, EU Member States and the European Commission, on plant health matters. The framework sets out the arrangements for joint working across the UK Plant Health Service and is intended to build on existing ways of working between Defra, the Forestry Commission and the Scottish Government, Welsh Government and the Northern Ireland Executive.

The framework is also intended to help deliver the UK Plant Health Service's "shared vision" of protecting the current and future health status of crops, trees, ornamental and other plants in Great Britain and the UK. This shared vision is stated to include:

- A joint strategic approach to tackling existing and future threats and developing appropriate risk mitigation approaches for England, Scotland, Wales and Northern Ireland.
- Collaboration on the development of pest risk analysis and contingency plans and the response to plant pest outbreaks in England, Scotland, Wales and Northern Ireland.
- Optimising the implementation of the current plant health strategies and developing a culture that drives improvements in plant health protection and decision making in England, Scotland, Wales and Northern Ireland.
- Facilitating the exchange of information to ensure the most efficient and timely plant health information on the situation in UK and the timely and efficient reporting of plant health incidents to the UK Plant Health Service.
- Coordination of press and publicity matters.

- Providing a mechanism for reviewing and improving working arrangements to ensure they remain effective and practical.
- Providing full and open access to relevant information.
- Proactive forward planning of resources and services.

Framework Governance Structure

The UK Plant Health Service consists of a [4-level pyramidal governance structure](#).

The base of the governance structure consists of various policy-specific technical sub-groups and working groups. Technical groups are expected to provide draft policy proposals for consideration at the UK Plant Health Risk Group. The first level of the pyramidal structure is where most of the new or existing bodies relevant to the ongoing operation of this framework sit. This level consists of the UK National Plant Policy Organisation (NPPO) Group, Plant Health Outbreak Readiness Board, UK Plant Health Risk Group, Defra-DA Policy Working Group and the FTA and TCA Coordination Group. The UK NPPO sits above the other groups within this level. Stakeholder Groups (i.e. Plant Health Advisory Forum and Tree Health Policy Group) sit alongside the bodies in this governance level and interact with the UK NPPO Group. The second level consists of the governance structures common to all Defra Common Frameworks: the Inter-Ministerial Group for Environment, Food and Rural Affairs (IMG-EFRA) and Senior Officials Programme Board (SOPB). The IMG-EFRA sits above SOPB within this governance level. Intergovernmental structures sit at the top of the pyramidal governance structure.

Related Groups within Framework Governance Structure

The framework notes that audits of third countries will be developed and managed by the Import Threats and Horizon Scanning Group (ITHS) and overseen by the Plant Health Risk Group. The framework notes that UK SPS experts from across the UK Plant Health Service will be solicited to support audits.

The UK and Great Britain will also continue to be subject to audits by third countries and the European Commission. The framework indicates that this process for co-ordination and management of inward audits from third countries is still being developed. The stated ambition is for all aspects of plant health audits to be managed by the Import Threats and Horizon Scanning Group with oversight from the Plant Health Risk Group and UK Plant Health Market Access Group. The framework notes that management of inward audits in the past has been conducted by collaboration between Defra's international policy team, the Scottish Government, Welsh Government, Northern Ireland Executive and Forestry Commission.

The House of Lords Common Frameworks Scrutiny Committee raised its concerns on the number and scope of Policy Specific Technical Sub-Groups and Working Groups listed in the UK Plant Health Service diagram. In [correspondence dated 11 March 2022](#), the Committee stated:

“ We were concerned that, despite the large number of working groups that play a role in the operation of the framework, proper information was only provided for four of them – the UK NPPO, the UK Plant Health Policy Group, the UK Plant Health Market Access Working Group and the UK Plant Health Risk Group. Even in these cases, the information is limited. For example, the regularity of meetings is not outlined in Annex 4, nor is there a mention of who chairs meetings. Could you provide this information for these groups? Additionally, we are concerned at the large number of groups, some with titles that could suggest overlapping responsibilities for which there is very little information. Could you therefore provide us with more detail on the work and composition of the following groups:

- Plant Health Outbreak Readiness Board”
- FTA and TCA Coordination Group”
- Plant Health Advisory Forum”
- Tree Health Policy Group”
- Surveillance and Control sub-group”
- IT preparedness sub-group”
- Training and Exercises sub-group”
- Outbreak management process/lessons learned sub-group”
- Risk Register and PRA sub-group”
- Import Threats sub-group”
- Publicity and Awareness Raising sub-group”
- Legislation and Implementation sub-group”
- Surveillance, Incidents, Contingency Plans sub-group”
- Science Coordination WG”
- Forest Reproductive Material (Ad Hoc) Working Group”

We are also concerned that such a large number of working groups and complex set of working arrangements could create excessive bureaucracy.”

UK Plant Health Service Responsibilities

The framework notes the following responsibilities that parties to the framework should adhere to as part of the decision-making process:

1. Provision of Information
 - a. The parties should provide each other with full, open and timely access to information which the other may need in order to effectively discharge its responsibilities, whether through the working groups set out in the framework governance structure or through correspondence.

- b. They will keep each other informed of contacts with third countries on relevant trade related matters and liaise on press and publicity matters (through the Publicity and Awareness Raising Sub-Group).
 - c. They will keep each other informed on matters of mutual interest, including opportunities for collaboration and sharing of resources, for example in research projects and developments.
 - d. They will also inform each other on significant contact with stakeholders and external communications.
 - e. Northern Ireland's unique position in relation to EU engagement will be respected.
2. Collaboration
- a. The parties will work together to develop policy on matters of mutual interest, and will endeavour to reach agreement and work together to resolve disagreements (see [dispute resolution procedure](#)).
 - b. One forum to foster collaboration is the UK Plant Health Policy Group (also known as Defra-DA Policy Working Group in the framework governance structure). The UK Plant Health Policy Group will contribute to UK policy positions for international meetings and international standards, including timely reporting of outcomes, and liaising on proposals emanating from them.
3. Coordination
- a. The parties will consult each other on their timetables and plans to implement legislation to deliver changes in policy on regulated plant material and pests.
 - b. Where parallel legislation is to apply, participants will consult each other on draft instructions for lawyers and exchange copies of draft and finalised legislation.
4. Trade promotion and cooperation
- a. This will be coordinated by the UK Plant Health Market Access Working Group. The Market Access Working Group reports directly into the NPPO which all parties are members of.

UK Government

Defra is responsible for strategic oversight, policy development, legislation and for ensuring that appropriate governance structures and resources are in place to underpin the framework, such as coordination of risk assessment and policy development across the UK. Forestry and woodlands policy is determined by the Secretary of State for Environment, Food and Rural Affairs with guidance from Defra officials and the Forestry Commission.

Defra is also responsible for representing the agreed UK view at international meetings, including under the governing bodies of the IPPC.

Animal Plant Health Agency

In terms of delivering plant health policy, the Animal Plant Health Agency (APHA; an executive agency of Defra) operates in England and Wales. APHA's Plant Health and Seeds Inspectorate (PHSI) is the responsible official body for implementation of plant health regulatory functions, including inspection work and surveillance in England and Wales but excluding specific plant health (forestry) activities. APHA currently delivers scientific licensing, import and export controls and plant passporting controls for the forest nursery sector. It is represented on the various governance bodies that underpin the framework including the Plant Health Risk Group meetings.

Forestry Commission

The Forestry Commission is responsible for Plant Health (Forestry) and Forest Reproductive Materials matters in England, including import controls on wood and wood products and most of the operational delivery of tree health policy such as surveillance, responding to outbreaks and advice. It is represented on the various governance bodies that underpin the framework.

[A Memorandum of Understanding for the Cross-Border provision of Forestry Functions and Research Delivery](#) has been agreed between respective Governments for the Forestry Commission to deliver a range of cross border activities.

Scottish Government

Scottish Ministers have responsibility for tree and plant health policy and legislation. Scottish Forestry provides advice and implements plant health forestry policy. SASA provides policy advice on plant health and plant and seed certification and plays a part in UK representation on matters relating to seed potato certification. The framework notes it is represented on various governance bodies that underpin the framework.

Forestry and land management functions were conferred on the Scottish Ministers on 1 April 2019 and two new bodies (Forestry and Land Scotland, and Scottish Forestry) were established on 1 April 2019 to deliver these functions. Inspection for imports, export and surveillance is undertaken by Scottish Government inspectors. However, some functions are undertaken by Forestry Commission inspectors, on behalf of Scottish Ministers, to deliver a range of plant health and forestry cross border activities.

Welsh Government

The Welsh Government has responsibility for responsible for plant health issues in Wales and provides strategic policy advice, development of legislation, and implementation of official controls on plant and tree health, and plant and seed certification.

Plant health (forestry) functions are being delivered by Natural Resources Wales and the Forestry Commissioners. Natural Resources Wales carries out terrestrial disease control and surveillance.

APHA's Plant Health and Seeds Inspectorate (PHSI) is the responsible official body for implementation of plant health regulatory functions in Wales on behalf of the Welsh Government.

Northern Ireland Executive

In Northern Ireland, the Minister for the Department of Agriculture, Environment and Rural Affairs (DAERA) has responsibility for plant health matters across agriculture and forestry. This includes responsibility for:

- the implementation of official controls for plant health;
- import and export inspections; plant passporting;
- phytosanitary certification to facilitate trade; in country surveillance;
- certification services for seed potatoes; and
- regulation and enforcement across agriculture, horticulture and forestry.

Scientific support and evidence is provided by the Agri-food and Biosciences Institute (AFBI). The plant health division works with partners in the UK Plant Health Service and the Government of Ireland to evaluate and manage the risk of priority pests and diseases identified on the [Northern Ireland Plant Health Risk Register](#).

DAERA is represented on the various governance bodies that underpin the framework, including the Plant Health Risk Group. DAERA also contributes to UK-focused discussions within such groups including matters which affect UK and international trade and trade in [Qualifying Northern Ireland Goods](#). For matters concerning trade and international strategy, DAERA is expected to contribute through representation on the NPPO and the Market Access Working Group.

The framework notes there are formal North-South Ministerial Council arrangements for cooperation and sharing responsibility for plant health on the island of Ireland. A Plant Health and Pesticides Steering Group oversees an annual work programme, which enables DAERA and the Government of Ireland Department of Agriculture, Food and the Marine (DAFM) to develop "shared strategic partnership approaches".

Roles and responsibilities: existing or new bodies

This section sets out the roles and responsibilities of any bodies associated with the framework which already exist, or which are to be created.

The framework only provides detail on three of the groups associated with the UK Plant Health Service:

- [UK National Plant Protection Organisation](#)
- [UK Plant Health Risk Group](#)

- [UK Plant Health Policy Working Group](#)

Defra provides the secretariat for each of the above groups.

UK National Plant Protection Organisation

The UK National Plant Protection Organisation (NPPO) consists of the Chief Plant Health Officers of England (and the UK), Scotland, Wales and Northern Ireland. The Head of Tree Health and Contingency from the Forestry Commission is also part of the UK NPPO representation and has a role for co-ordinating forestry views at a Great Britain level.

The UK NPPO group is responsible for strategic oversight of plant health issues at the domestic and international level. It takes policy decisions on plant health issues affecting the UK as a whole and provides direction to, and oversight of, the work of the UK Plant Health Risk Group. The UK NPPO Group also has a role in monitoring, reviewing and resolving disputes within the framework.

The framework also notes that this group is supported by policy specific technical sub-groups and working groups. The governance structure suggests that several other groups also report to the UK NPPO but limited information on the relationships and shared remits between groups is given in the framework documents (see [Related Groups within Framework Governance Structure](#)).

UK Plant Health Risk Group

The UK Plant Health Risk Group (PHRG) consists of officials from Defra, APHA, the Forestry Commission, Scottish Government, Welsh Government, and DAERA.

The UK PHRG is listed by the framework as an advisory group for the UK NPPO Group. Its role is to advise UK NPPO Group of new and emerging plant health threats with recommendations for actions. The UK PHRG is expected to use and maintain the [UK Plant Health Risk Register](#) to facilitate risk assessment and consultation on risk management measures against plant pests and pathogens which pose a potential risk to UK crops, trees and ecosystems.

The UK PHRG does not cover areas where there are already separate arrangements in place. The framework lists Defra's Tree Health Policy Group and the Scottish Tree Health Advisory Group as an example of one of these areas. However, the framework does state the outcomes from such groups feed into the UK PHRG and vice versa , to ensure consistency and inform UK positions. In addition, the UK PHRG is also stated to maintain an overview of and offer advice on outbreak situations.

There are specific Northern Ireland considerations listed in the framework that are relevant to the UK PHRG. Legislation in Northern Ireland implements the EU Plant Health Regulation (PHR; Regulation (EU) 2016/2031 on protective measures against pests of plants). The PHR is based on the common EU list of harmful pests and high-risk hosts which is the starting point for controls. The PHR's Protected Zone provisions allow Northern Ireland to implement additional control measures on pests and diseases where necessary to protect plant health (subject to the UK's international obligations under the WTO SPS). Within Great Britain, equivalent arrangements apply based on provisions from retained EU regulations (i.e. By retained EU law). It is expected that the technical case for

changes to regulations and requirements will be presented to the UK PHRG before the decision to proceed is taken by the party (i.e. one of the parties to the framework) in question.

UK Plant Health Policy Group

The UK Plant Health Policy Group (PHPG) consists of officials from Defra, the Forestry Commission, Welsh Government, Scottish Government and the Northern Ireland Executive.

The purpose of the UK PHPG is to provide policy support to the UK NPPO Group, the UK Plant Health Risk Group (UK PHRG) and, as necessary, to its underpinning working groups.

The framework notes that a specific focus of this group is to ensure the effectiveness of the framework in maintaining common policies and approaches to protect plant health across the UK.

Senior Official Programme Board

The Senior Official Programme Board (SOPB) is made up of senior officials from each government and appears to be a feature of framework governance structures for most Environment, Food and Rural affairs (EFRA-related) common frameworks. The SOPB and IMG-EFRA^{xi} sit above framework-specific governance structures for the following frameworks:

- Agricultural support
- Animal health and welfare
- Air Quality
- Plant varieties and seeds
- Integrated pollution prevention and control: developing and setting of Best Available Techniques (BAT)
- Fertilisers
- Plant health
- Organics
- Chemicals and pesticides
- Fisheries management and support
- Ozone Depleting Substances (ODS) and Fluorinated Greenhouse Gases (F-gases)

^{xi} Inter-ministerial Group for Environment, Food and Rural Affairs

Some framework documents contain [virtually no information about the SOPB and its membership](#) whereas others [contain full terms of reference](#). Legislatures have asked questions about how the membership of the SOPB [differs from other framework forums](#), [its role in dispute resolution](#), and [its additional tasks](#).

The primary role of the SOPB appears to be to sift disputes before they are escalated for Ministerial attention. In response to a letter by the House of Lords Common Framework Scrutiny Committee, George Eustice, MP Secretary of State for Environment, Food and Rural Affairs, [further stated](#) that:

“ [the SOPB] can also play a role in helping to avoid the need for a dispute to be referred to ministers, for example if a resolution and consensus can be achieved at the SOPB.”

Decision-making

The UK Plant Health Risk Group, (UK PHRG; attended by Defra, Scottish Government, Welsh Government, Forestry Commission and DAERA) is the main decision-making body within the framework. The UK PHRG:

- takes decisions on protecting biosecurity in England, Scotland, Wales and Northern Ireland;
- advises on technical matters relating to Northern Ireland, supporting decision making by DAERA, in the context of the Northern Ireland Protocol.

The governance arrangements are stated to focus on building "*consensus-based decision-making*".

Ministers representing each of the governments will take decisions on changes to all areas of EU retained law on plant health, after recommendations from the UK PHRG and UK NPPO as set out in the framework. This will include both technical changes made through secondary legislation as well as any amended, or new, primary legislation. The NPPO can escalate any issues or disputes to the Senior Officials Programme Board, which in turn reports into IMG EFRA.

The Concordat indicates that parties agree on the following decision-making:

- The parties should aim to implement policy decisions at approximately the same time.
- All parties should be informed of the recommendations made in the other nations (whether for common or divergent approaches) and the underpinning rationale.
- A consensus should be sought among the parties on the approaches to take, and efforts made to resolve any disputes that occur (see [Dispute Resolution](#) process).
- GB-wide legislation will only be taken forward where consent has been sought of Scottish Government, Welsh Government and the Northern Ireland Executive Ministers and parliaments.

The Concordat also notes that parties will aim to implement common policy approaches but also lists the following principles on managing divergence:

- Where one or more parties wishes to diverge from a four nations approach to any area within scope of the Concordat, before divergence can happen, the parties must first seek to agree a common approach that accommodates the desired outcomes of all the parties, in line with the framework's preference for a common approach over divergence.
- Where a common approach cannot be agreed, and divergence is not considered acceptable, then the dispute resolution mechanism should be engaged.

Monitoring and enforcement

The UK NPPO is expected to meet quarterly to strategically monitor the framework. The purpose of monitoring is to assess:

- intergovernmental cooperation and collaboration as a result of the framework;
- whether parties are implementing and complying with the framework;
- whether divergence has taken place in contravention of the [common framework principles](#); and
- whether harmful divergence has taken place that impacts on the policy area covered by the framework.

The outcome of this meeting will be used to inform joint decision-making processes and the next review and amendment process. If there is an unresolved disagreement, the [dispute avoidance and resolution mechanism](#) outlined in the framework should be used.

Review and amendment

The review and amendment mechanism (RAM) is intended to ensure the framework is able to adapt to changing policy and governance environments. The framework indicates that the UK Plant Health Policy Group will maintain an overview of the operation of the framework and, in consultation with the parties, may seek to amend it, guided by advice from the UK NPPO Group. The framework also notes that the RAM is intended to rely on consensus from the relevant Ministers at each stage of the process.

At the outset of the review stage, the parties must agree timelines for the process, including the possible amendment stage. The framework allows for third parties to be involved in an advisory capacity at the invitation of any party to the framework. These include other government departments or bodies as well as external stakeholders. If a decision is not reached in either the review or amendment stage, parties to the framework can raise it through the framework dispute avoidance and resolution process.

The framework notes that the first review will take place two years after the framework has been signed. It is not clear whether this means the provisional agreement at phase 4 of framework development or phase 5 at the implementation stage. The framework documents also note that a formal review can take place earlier than planned if all parties agree there is a need to review the framework sooner than two years after signing. It

should also be noted that the [European Union \(Withdrawal\) Act and Common Frameworks Quarterly Update \(26 December 2020 to 25 March 2021\)](#) indicates that the framework has been operating on a provisional basis since January 2021.

There are two types of review that can take place within the framework - periodic and exceptional. The process for agreeing amendments should be identical regardless of the type of review and is set out in the framework as follows.

Review stage

- Periodic review: the operation of the framework should be reviewed every two years and held in line with official or ministerial level meetings. The period of two years starts from the conclusion of a periodic review and any amendment stages that follow.
- Exceptional review: an exceptional review of the framework is triggered by a 'significant issue'.
 - A significant issue must be time sensitive and fundamentally impact the operation or the scope of the framework.
 - This kind of review may include a review of governance structures if all parties agree it is required. Otherwise, these issues are handled in the periodic review.
 - The same significant issue cannot be discussed within six months of the closing of that issue.
 - The substantial amendment stage can only be triggered through unanimous agreement by Ministers.

Amendment stage

Following the parties jointly deciding to enter the amendment stage, parties will enter into discussion around the exact nature of the amendment. This can either be led by one party to the framework or all.

If an amendment is deemed necessary during either type of review, the existing framework will remain in place until a final amendment has been agreed.

All amendments to the framework must be agreed by all parties and a new non-legislative agreement signed by all parties. If agreement cannot be reached on whether or how a framework should be amended this may become a disagreement and, as such, could be raised through the framework [dispute resolution mechanism](#).

Dispute resolution official level

This section considers the dispute resolution process set out within the framework.

The framework notes that the dispute resolution process may be triggered when the proposed policy measure is perceived to have a negative impact, such as where the proposal:

- is unachievable and not technically justified;

- would result in creation of an advantage or disadvantage of certain businesses geographically;
- conflicts with the policy of a party to the framework;
- would compromise the functioning of the UK internal market; or
- is contrary to international obligations including the Protocol on Ireland/Northern Ireland.

There is limited information on dispute resolution within the framework documents. However, the process does appear to follow the governance structure of the UK Plant Health Service. The framework notes that it is the intention of the dispute resolution process for issues to be discussed and resolved at the earliest stage possible. As such, disputes are expected to be first discussed and resolved at the UK NPPO level. If necessary, the UK NPPO can escalate the issue to the Senior Officials Programme Board and, if this fails, they can escalate to Ministers in each government.

If a disagreement has still not been resolved at Ministerial level within the framework, the disagreement may be referred to the [appropriate intergovernmental structures](#). This is expected to be a method of last resort.

The [high level principles](#) associated with the framework note that any party can seek legal counsel in the dispute resolution process. This was queried in [correspondence from the House of Lords Common Frameworks Scrutiny Committee to the Secretary of State for Environment, Food and Rural Affairs on 11 March 2022](#):

“ We were interested to read that the dispute resolution process outlines how legal counsel can be sought at any stage in the process. We have not seen mention of legal counsel in other frameworks. Could you clarify why this particular framework mentions legal counsel as an option in the dispute resolution process?”

Dispute resolution Ministerial level

It is anticipated that recourse to resolution at Ministerial level will be as a last resort and only sought where [dispute resolution at official level](#) has failed. Disputes which reach Ministerial level will be resolved through intergovernmental dispute resolution mechanisms. Relevant intergovernmental disputes may concern the ["interpretation of, or actions taken in relation to, matters governed by \[...\] common framework agreements"](#).

Intergovernmental dispute resolution mechanisms were considered as part of the [joint review on intergovernmental relations](#). The [conclusions of the joint review](#) were published on 13 January 2022 and set out a new approach to intergovernmental relations, which the UK Government and devolved governments have agreed to work to. The joint review created a new three-tiered system for intergovernmental discussions, doing away with the old Joint Ministerial Committee structure.

Dispute resolution Ministerial level

What will intergovernmental relations look like?

Proposed outline of new intergovernmental relations structure

Top tier:

The Council

This is made up of the Prime Minister and heads of devolved governments.

Middle tier:

Standing committees

The Interministerial Standing Committee (IMSC)

Ministers responsible for IGR consider issues that cut across different policy areas, and facilitate collaborative working between groups in the lowest tier.

The Finance Interministerial Standing Committee (F:ISC)

Will comprise Finance Ministers and consider finance and funding matters.

Additional interministerial committees

These committees might be formed temporarily to consider issues that would otherwise be in the remit of IMSC, but which require special consideration.

Lowest tier:

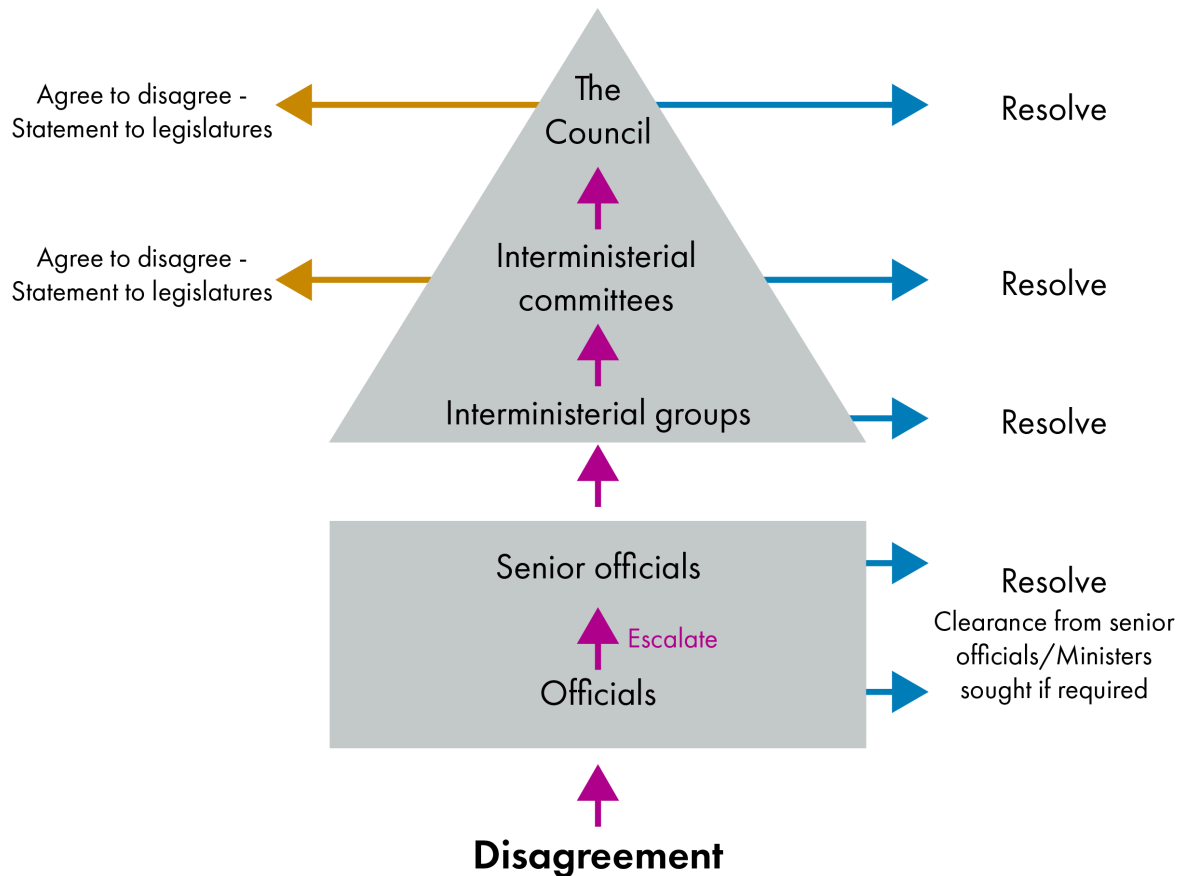
A number of interministerial groups (IMG) will be formed to discuss specific policy areas, such as on transport, Net Zero, and the Trade and Cooperation Agreement with the EU.

The lowest and middle tiers have [specific responsibilities for common frameworks](#). At the lowest tier, interministerial groups (IMGs) are responsible for particular policy areas, including common frameworks falling within them. At the middle-tier, the Interministerial Standing Committee (IMSC) is intended to provide oversight of the common frameworks programme.

The new IGR dispute resolution process follows on from the process at the official level. If a dispute cannot be resolved at the official level as set out in individual frameworks, it is escalated to the Ministerial level. The diagram below illustrates the general dispute resolution process for frameworks, including discussions between officials (square) and Ministers (triangle).^{xii}

xii A slightly different dispute resolution process applies for disputes of a financial nature, which involve the Finance Interministerial Standing Committee.

Dispute Resolution at official and Ministerial levels



At the lowest level, interministerial groups comprising portfolio Ministers attempt to resolve the disagreement. If their attempts are unsuccessful, the issue can be escalated to an interministerial committee. If the interministerial committee is unsuccessful in resolving the issue, it can either agree to disagree, in which case each government makes a statement to their legislature to or escalate the dispute further. If a dispute is escalated to the highest level, third-party advice or mediation should normally be sought and made available to the Council. If the Council fails to find agreement, it is again required to make a statement to their legislatures.

The new process includes more extensive reporting requirements about disputes. The IGR secretariat is required to report on the outcome of disputes at the final escalation stage, including on any third-party advice received. Each government is also required to lay this report before its legislature.

The Office for the Internal Market (OIM) can provide expert, independent advice to the UK Government and devolved governments. Its advice and reports may, however, be used by governments as evidence during a dispute on a common framework.

Rachel Merelie of the OIM explained the position whilst giving evidence to the [House of Lords Common Frameworks Scrutiny Committee in November 2021](#):

“ The OIM is not involved in dispute resolution. We are here to provide advice to government, using our economic and technical expertise...It is of course possible...that our reports are considered in some shape or form as evidence in support of that process, and we remain open to being used in that way.”

Implementation

The framework was published on 3 February 2022 and [has been operating on a provisional basis since January 2021](#). UK legislatures now have the opportunity to scrutinise the framework and raise any concerns with their respective government.

If scrutiny and any subsequent reappraisal of the framework leads to significant changes, the provisional framework may need to undergo further collective agreement before final confirmation and implementation.

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