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Assembly

## Research and Information Service Briefing Paper

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# AERA Committee prioritised common frameworks – overview and considerations

**Suzie Cave and Mark Allen**

## 1 Introduction

As requested by the Agriculture Environment and Rural Affairs (AERA) Committee, the following paper explores the five prioritised UK Common Frameworks (CFs) identified by the AERA Committee. It seeks to highlight some common areas for further consideration across all five, and also identifies issues specific to each framework.

This paper is no way an exhaustive presentation of all issues and areas to be considered with the CFs, it merely acts as a starting point for further information and discussion.

The five prioritised CFs identified by the AERA Committee are:

- Agricultural support<sup>1</sup>;

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<sup>1</sup> [Agricultural support common framework Provisional framework outline agreement and concordat, Cabinet Office website, February 2022](#)

- Chemicals and Pesticides<sup>2</sup>;
- Animal Health and Welfare<sup>3</sup>;
- Plant Health<sup>4</sup>; and
- Fisheries Management and Support<sup>5</sup>.

## 2 What are Common Frameworks?

Pre-brexite, when the UK was a Member State of the EU (pre-31 January 2020) and during the transition period (i.e. 31 January 2020 – 31 December 2020), EU law provided the basis for minimal standards across the UK in specified policy areas, regardless of those areas having been reserved, excepted or transferred (devolved). Simply stated, that effectively provided a minimal common approach in those specified policy areas, across all four nations comprising the UK; which in turn, via the UK Government or the Devolved Administrations (DAs), were transposed and implemented.

However, this changed following the UK's exit from the EU *via* the UK and the EU's signing of Withdrawal Agreement<sup>6</sup>, and Westminster's subsequent enactment of The European Union (Withdrawal Agreement) Act 2020.<sup>7</sup> The Ireland/Northern Ireland [Protocol](#) (the Protocol) is a key component of the [Withdrawal Agreement](#). In effect, the Protocol is the means by which the free movement of goods on the island of Ireland has been secured by giving NI access to the EU single market.

The Protocol effectively binds Northern Ireland to a series of EU regulations as they relate to a range of standards including human rights, movement of people and goods and trade etc.

The Cabinet Office's 2021 Revised Policy Analysis<sup>8</sup> states that CFs are to create a common approach to policy areas and regulation, while acknowledging and managing divergence across the UK:

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<sup>2</sup> [Chemicals and Pesticides Provisional Common Framework Outline Agreement and Concordat, Cabinet Office website, February 2022](#)

<sup>3</sup> [Animal Health and Welfare Common Framework Provisional Framework Outline Agreement and Concordat, Cabinet Office website, February 2022](#)

<sup>4</sup> [Provisional UK Common Framework on Plant Health Provisional Framework Outline Agreement and Concordat, Cabinet Office website, February 2022](#)

<sup>5</sup> [Fisheries Management and Support Common Framework Provisional Framework Outline Agreement and Memorandum of Understanding, Cabinet Office website, February 2022](#)

<sup>6</sup> UK Government Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840655/Agreement\\_on\\_the\\_withdrawal\\_of\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_from\\_the\\_European\\_Union\\_and\\_the\\_European\\_Atomic\\_Energy\\_Community.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf)

<sup>7</sup> The European Union (Withdrawal Agreement) Act 2020 <https://www.legislation.gov.uk/ukpga/2020/1/contents/enacted>

<sup>8</sup> Cabinet Office, Framework Analysis 2021 (9 Nov 2021) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1031808/UK\\_Common\\_Frameworks\\_Analysis\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1031808/UK_Common_Frameworks_Analysis_2021.pdf)

*A UK Common Framework is an agreed common approach to policy areas that were previously governed by EU law, and intersect with areas of devolved competence. Common Frameworks will ensure that coherent approaches to regulation are maintained across the UK. They will also enable the UK Government and the devolved administrations of Scotland, Wales and Northern Ireland to make different choices on how to implement the rules in some of these policy areas.*

*A Framework may allow for intra-UK policy divergence so that each administration can make decisions on the appropriate approach for its jurisdiction, but may also facilitate consistent approaches between administrations, where administrations have determined that such consistency will be of benefit to citizens and/or businesses.*

The delivery of CF's will be impacted by the Ireland/Northern Ireland [Protocol](#) (the Protocol); a key component of the [Withdrawal Agreement](#). In effect, the Protocol is the means by which the free movement of goods on the island of Ireland has been secured by giving NI access to the EU single market. This means there may be areas of a CF to which NI will continue to align with the EU rather the UK regime.

However, at the time of writing this paper; there continue to be areas of ambiguity in how the Protocol operates and the outcome of the ongoing Protocol-related negotiations between the UK Government and the EU is awaited.

Nonetheless, the UK Government and three DAs have sought:

*...to ensure a common [CF development] approach ....where needed on policy areas where powers are returning/have returned from the EU and which intersect with devolved competence...<sup>9</sup>*

The three underpinning Principles for all CFs were proposed by the UK Government and endorsed by the Scottish and Welsh Governments at the Joint Ministerial Committee (European Negotiations) (JMC(EN)) in October 2017,<sup>10</sup> and later endorsed by the NI Executive in June 2020. Those Principles are: <sup>11</sup>

- **Principle 1** - CFs are to establish 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;

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<sup>9</sup> [UK Frameworks - GOV.UK \(www.gov.uk\)](#)

<sup>10</sup> NI Executive did not agree principles in October 2017 due to the collapse of the Executive on 16 January 2017. The NI Executive subsequently endorsed the principles following its formation in 2020. [UK Common Frameworks - GOV.UK \(www.gov.uk\)](#)

<sup>11</sup> [The European Union Withdrawal Act and Common Frameworks.pdf \(publishing.service.gov.uk\)](#)

- 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.
- **Principle 2** - CFs are to respect the existing devolution settlements and the democratic accountability of the devolved legislatures, and therefore are to:
- 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 DAs.
- **Principle 3** - CFs are to ensure: recognition of the social linkages between NI and the Republic of Ireland (RoI); acknowledgement that NI is to be the only part of the UK sharing a land frontier with the EU; and, adherence to the Belfast/Good Friday Agreement.

According to the UK Government and DAs, the CF's design, whether it requires a legislative or non-legislative approach, is to be informed by the specific policy area.

Worth noting here is the UK Government's most recent Framework Analysis (dated 9 November 2021)<sup>12</sup>, which identified 152 areas of EU law impacting one or more DAs' competences as a result of the UK's exit. In its Analysis, the UK Government categorised: 120 areas as requiring **no further action**; 29 areas as requiring **non-legislative CFs**; and 3 areas as requiring **legislative CFs**.

Additionally, the UK Government noted in its November 2021 update, its agreement with the DAs that both the UK Government and the DAs:

*... aim to complete delivery of the programme in March 2022 ahead of the pre-election period for the 2022 Northern Ireland Assembly elections.*<sup>13</sup>

The UK Government outlined the CF development process with five phases, endorsed by the DAs<sup>14</sup>. Those Phases comprise:

<sup>12</sup> The Cabinet Office, Framework Analysis 2021 (9 Nov 2021)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1031808/UK\\_Common\\_Frameworks\\_Analysis\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1031808/UK_Common_Frameworks_Analysis_2021.pdf)

<sup>13</sup> UK Government, The European Union (Withdrawal) Act and Common Frameworks: 26 June to 25 September 2021 (9

December 2021) <https://www.gov.uk/government/publications/the-european-union-withdrawal-act-and-common-frameworks-26-june-to-25-september-2021/the-european-union-withdrawal-act-and-common-frameworks-26-june-to-25-september-2021>

<sup>14</sup> Cabinet Office (December 2020) The European Withdrawal Act and Common Frameworks

[http://qna.files.parliament.uk/wsattachments/1197285/original/Seventh%20EU%20\(Withdrawal\)%20Act%20and%20Common%20Frameworks%20report.pdf](http://qna.files.parliament.uk/wsattachments/1197285/original/Seventh%20EU%20(Withdrawal)%20Act%20and%20Common%20Frameworks%20report.pdf)

- Phase One - Engagement between officials in the UK Government and the Devolved Administrations (DAs) on: where potential CFs are needed; and, the initial grouping of these CFs into legislative and non-legislative categories;
- Phase Two - Detailed policy development, including joint work between the UK Government and the DAs, which is to result in a jointly drafted and agreed Outline Framework;
- Phase Three - Technical stakeholder engagement with sector-specific stakeholders;
- Phase Four - Scrutiny stage, in which the CF is to undergo simultaneous scrutiny by the UK Parliament and the devolved legislatures (at the time of writing, this is the current stage of the five prioritised CFs); and,
- Phase Five - Development of post-implementation arrangements, which are anticipated to vary between CFs.<sup>15</sup>

It should be noted that once the scrutiny process is completed and frameworks are implemented, they may continue to be jointly updated by UK Government and devolved administration (DA) Ministers.<sup>16</sup>

#### Consideration Points

- Do the CFs adhere to the three agreed Principles that are to underpin all CFs?
- Is DAERA satisfied that each CF meets the CF Principles?

For example:

- Principle 1 states that CFs to establish where they are necessary in order to “enable the functioning of the UK internal market, while acknowledging policy divergence”. However there are many issues to be considered around divergence, especially around identifying potential impacts and addressing issues of divergence from a NI perspective within a UK governance framework (See section on divergence for more detail)
- Principle 3 has a specific NI focus. It states that: CFs are to recognise the “social linkages” between NI and the RoI; NI is the only part of the UK sharing a land frontier with the EU; and, CFs are to adhere to the Belfast/Good Friday Agreement.

<sup>15</sup> Department for Business, Energy and Industrial Strategy, Company Law: Provisional Common Framework (December 2021) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1041544/Company\\_Law\\_Provisional\\_Common\\_Framework.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041544/Company_Law_Provisional_Common_Framework.pdf)

<sup>16</sup> Cabinet Office [online] (December 2020) Common Frameworks <https://www.gov.uk/government/collections/uk-common-frameworks>

### 3 Five Prioritised CFs – key features

Appendix 1 in the paper provides key comparative data for all five of the AERA Committee prioritised CFs.

It should be noted that all of these CFs are provisional in nature and as such may be subject to change resulting from their progress through phase 4 of the CF development process.

Within this context the information provided within this paper is intended to assist in the Committee's scrutiny of the five prioritised CFs and the formation of its consultation responses.

In terms of the approaches taken across the prioritised CFs the following general observations are useful for setting the scene:

- Four of the five are based on outline agreements and concordats, whilst the Fisheries Management CF is based on an outline agreement and Memorandum of Understanding (MoU);
- All five contain similar information in terms of headline themes but there is diversity in how the information is presented and this makes a direct side by side comparison challenging;
- All five claim to reflect and adhere to the Joint Ministerial Committee (EU Negotiations) Communique principles outlined in section 2 of this paper;
- All five of the prioritised CFs take account of and operate in a legislative environment but do contain non-legislative elements. These distinctions are potentially more nuanced than clear cut;
- All five have foundational principles that underpin their operation but there is some variation between the frameworks in terms of these principles;
- There are linkages to other specific CFs referenced in four of the five prioritised frameworks. The Fisheries Management CF makes no such specific references;
- The number and type of decision-making fora across all five frameworks varies considerably and some represent a continuation of existing fora, whilst others are new;
- Decision making and dispute resolution mechanisms are integral to all of the CFs and involve officials and Ministers at various stages;
- Decisions are made at civil servant level with Ministerial approval, with lack of detail around Parliamentary scrutiny, stakeholder involvement;
- All of the frameworks have integral monitoring and review steps. Whilst there is some variation in the timing of these actions, their presence indicates the fact that CFs are live documents which will continue to evolve as they operate.

## 4 Prioritised Common Frameworks - general observations

The following section considers some common observations and questions across the five prioritised CFs identified by the AERA Committee. For more detail see the table in Appendix 1 of this paper.

### 4.1 Brexit Freedoms Bill

On 31<sup>st</sup> January 2022 the UK Government formally announced their intention to introduce a so called Brexit Freedoms Bill<sup>17</sup>. Whilst there remains a lack of detail on the specific contents of the Bill, the government announcement included the following headline overview:

*The Bill will make it easier to amend or remove outdated 'retained EU law' - legacy EU law kept on the statute book after Brexit as a bridging measure – and will accompany a major cross-government drive to reform, repeal and replace outdated EU law.*

Within the context of UK CFs operating under retained EU law in a large number of policy areas, the impacts of the Brexit Freedoms Bill could be considerable.

More specifically the following questions would seem pertinent:

- When will the Brexit Freedoms Bill actually be published and when is it likely to come into effect?
- Does the government have an actual list of retained EU law which it has identified as being outdated and in need of reform, repeal or replacement? What criteria have been or will be used in this assessment?
- If such a list does exist how much of the law identified within it falls within the remit of the five prioritised CFs identified by the AERA Committee?
- Furthermore, how does any such list compare to the EU legislation contained in Annex 2 of the Ireland/Northern Ireland Protocol?
- Has there been or will there be any impact assessment of the Brexit Freedoms Bill in relation to the operation of UK CFs?
- Will the Brexit Freedoms Bill actually speed up the process of legislative divergence between Northern Ireland and GB?
- Does any resulting speed up in legislative divergence between GB and NI actually call into doubt the whole CFs process? Conversely could this actually significantly increase the issues that the CFs process is designed to deal with, especially in relation to decision making and dispute resolution processes?

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<sup>17</sup> [Prime Minister pledges Brexit Freedoms Bill to cut EU red tape, UK Government press release, 31 January 2022](#)

## 4.2 Belfast/Good Friday Agreement considerations

Whilst the five prioritised CFs are clearly written by different authors, at least two of the five, namely Agricultural Support and Chemicals and Pesticides, highlight the principle for CFs to ‘*adhere to the Belfast Agreement*’. This principle is outlined in the Joint Ministerial Committee (EU Negotiations) Communiqué, October 2017<sup>18</sup>, which was signed by the UK Government and devolved administrations.

All five of the prioritised CFs do however refer to the principle of ‘*respecting*’ the devolution settlements within the UK, and the Belfast/Good Friday Agreement forms the basis of the devolution settlement in Northern Ireland in the form of the Northern Ireland Act 1998<sup>19</sup>.

On the basis then that all the CFs either adhere to or respect the Belfast/Good Friday Agreement, there are a number of questions around what this will mean in operational terms, particularly in relation to decision making and dispute resolution.

### 4.2.1 Decision making procedures

A key question concerns the powers of the DAERA Minister to either endorse an agreed proposal made by decision making fora or to oppose a decision and trigger the dispute resolution process.

More particularly, this potential issue has already had a degree of publicity in relation to the implementation of Sanitary Phytosanitary (SPS) checks at Northern Ireland’s ports as part of the architecture of the Ireland/Northern Ireland Protocol.

On 2<sup>nd</sup> February 2022, DAERA Minister, Edwin Poots MLA, ordered the cessation of SPS port checks by DAERA staff<sup>20</sup>, based on legal advice that Executive approval was required for such checks. Whilst the legal advice that led to this decision has not been published, there has been media commentary<sup>21</sup> suggesting that the central driver is the requirement for Executive approval for cross-cutting and controversial issues.

Section 28A of the Northern Ireland Act 1998<sup>22</sup> deals with the Ministerial code for Executive Ministers and establishes the conduct required of Ministers. Section 2.4 of the Ministerial code<sup>23</sup> created by Section 28A of the Act, sets out those decisions which a Minister is required to bring before the Executive Committee, namely any matter which:

- (i) cuts across the responsibilities of two or more Ministers;
- (ii) requires agreement on prioritisation;

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<sup>18</sup> [Joint Ministerial Committee \(EU Negotiations\) Communiqué, 16 October 2017](#)

<sup>19</sup> [Northern Ireland Act 1998](#)

<sup>20</sup> [NI Protocol: Irish Sea border checks ordered to end at midnight, BBC news website, 1 March 2022](#)

<sup>21</sup> [DUP-Civil Service showdown could be days away, and the implications are vast, Belfast Telegraph, 1 March 2022](#)

<sup>22</sup> [Section 28A, Northern Ireland Act 1998](#)

<sup>23</sup> [Ministerial Code, Northern Ireland Executive](#)



- (iii) requires the adoption of a common position
- (iv) has implications for the Programme for Government;
- (v) is significant or controversial and is clearly outside the scope of the agreed programme referred to in paragraph 20 of Strand One of the Agreement<sup>24</sup>;
- (vi) is significant or controversial and which has been determined by the First Minister and deputy First Minister acting jointly to be a matter that should be considered by the Executive Committee; or
- (vii) relates to a proposal to make a determination, designation or scheme for the provision of financial assistance under the Financial Assistance Act (Northern Ireland) 2009.

On the basis of this information the following questions arise:

- Would any of the decisions made under the CFs that involved local Ministers, most specifically those that would lead to regulatory divergence between GB and NI, meet the criteria of decisions that would require Executive Committee approval?
- If Executive Committee approval was required how would this affect the ability of a DAERA Minister to be involved in either the decision making or dispute resolution processes set out within each of the five prioritised CFs?

#### 4.2.2 Lack of an Executive

The current lack of an Executive raises the following potential questions in relation to the operation of the five prioritised CFs:

- Where local Ministerial agreement/endorsement is required in relation to a decision around potential regulatory divergence and subsequent implementation of the same what happens to this process when no DAERA Minister is in post? Can implementation occur based on approval by officials alone? If not, what happens?
- What impact could the lack of a local DAERA Minister have on the potential to trigger the dispute resolution processes built into each of the prioritised CFs? How likely would civil servants be to trigger the dispute resolution mechanism without Ministerial approval/cover?
- What impact could the lack of a local DAERA Minister have on the operation of the dispute resolution process where a dispute reached Inter Ministerial Group (IMG) Environment Food and Rural Affairs (EFRA) level? In effect who would ensure that a Northern Ireland perspective was heard at this level? Is there any provision for this eventuality?
- If a dispute progressed beyond IMG EFRA to Intergovernmental relations level, who would represent Northern Ireland's interests and how?

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<sup>24</sup>[The Belfast Agreement, 1998](#)

### 4.3 Dispute resolution – Intergovernmental Relations (IGR)

It should be stated the emphasis across all the frameworks is to avoid or resolve disputes quickly, but there is a recognition that this may not always be possible.

All five of the prioritised CFs have mechanisms for dispute escalation and resolution. Whilst there is some variation at the lower levels of dispute resolution, the higher up the chain you go, the more common the approach.

The upper end of the dispute resolution process is not particularly clear in terms of the actual final resolution of a dispute. Reference is made across all of the frameworks to the ultimate/final resort being the Inter-Governmental Relations (IGR) process that forms the basis of the UK's devolution settlement. This process sits separate from the CFs process as it has a wider role to play in a range of devolved governance issues across many policy areas.

A government commissioned review of the effectiveness of UK devolution undertaken and published by Lord Dunlop in 2019<sup>25</sup> highlighted that:

*...the IGR machinery is no longer fit for purpose and is in urgent need for reform*

In light of Lord Dunlop's report, the UK Government and devolved administrations undertook a specific review of Inter-Governmental Relations (IGR) and the conclusions, accepted by all parties, were published in January 2022<sup>26</sup>.

These conclusions now provide the architecture for disputes, including those identified through the CF process, to be resolved. Whilst the IGR process is too complex for a rigorous assessment within this paper, it should be noted that it is now premised on a three-tier decision making structure with the Prime Minister and Heads of Devolved Governments Council at its summit. The significant thing to note is that an issue that escalates to this Council level is not guaranteed to be resolved.

As noted in paragraph 11 of Annex D: Dispute Avoidance and Resolution Process, within the recent review document<sup>27</sup>:

*...If governments reach a stage in the process where they are unable to reach a resolution and progress the dispute further, each government must make a statement to their respective legislatures setting out the circumstances for the failure to reach a solution.*

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<sup>25</sup> [Review of UK Government Union Capability, Lord Dunlop, November 2019, Chapter 4](#)

<sup>26</sup> [The Review of Intergovernmental Relations, Cabinet Office website, 1 March 2022](#)

<sup>27</sup> *ibid*

**Potential questions:**

- How likely is it that a CF dispute could reach ‘Council’ level within the IGR process? Do DAERA officials have any sense as to how often this could occur in relation to the AERA Committee’s five prioritised CFs?
- Is there potential for use of the dispute resolution process to become busier as divergence between GB and NI in numerous policy areas potentially increases?
- Is the IGR and wider dispute resolution process adequately resourced to deal with a growing caseload from CF divergence issues?
- What happens next, if governments fail to reach a solution at Council level? Will agreeing to disagree be realistically possible on operational matters tied to CFs? Will such an outcome not have the potential for operational paralysis?

**4.4 The Ireland/Northern Ireland Protocol**

NI is in a unique position within the UK. Article 12 of the Protocol<sup>28</sup> - a part of the Withdrawal Agreement between the UK and the EU – states that the Protocol provides for the continued application of a specified range of EU law in NI, following the UK’s exit from the EU and subsequent post-transition period.

A key driver of the CF process is to ensure that a “*common approach*” to policy is maintained across the UK:

*Frameworks ensure a common approach is taken where powers have returned from the EU which intersect with policy areas of devolved competence<sup>29</sup>*

However, this UK wide common approach may not apply to areas that intersect with the Protocol. In this instance, the CF becomes GB wide-namely England, Scotland and Wales, while NI complies with the EU. Initially this may not mean much of a change from the status quo, with the majority of CF’s transposing EU law and international obligations over. The issues and complexities arise should there be regulatory changes over time between the EU and UK, creating divergence with NI caught in the middle.

As such, potentially important considerations arise for NI when considering CFs – i.e.:

1. Whether, and how, a particular CF interacts with the Protocol? and,
2. Whether a CF impacts on the application of the Protocol – either directly or indirectly?

<sup>28</sup> HM Government, New Protocol on Ireland/Northern Ireland (18 October 2019) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840230/Revised\\_Protocol\\_to\\_the\\_Withdrawal\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840230/Revised_Protocol_to_the_Withdrawal_Agreement.pdf)

<sup>29</sup> [UK Common Frameworks page, Cabinet Office website, 1 March 2022](#)

3. How likely regulatory positions under the Protocol areas could change between the EU and UK, impacting the application of CFs and the Protocol?

However, it should be highlighted that ongoing Protocol- related negotiations continue at the time of writing this paper and the outcome of those negotiations remains to be seen.

As described above, the degree to which the CFs apply to NI is influenced by the Protocol. The five CF policy documents list the areas of the Protocol that impact them i.e. the areas of the CF that are listed under the Protocol to which NI will adhere to, rather than the UK regime.

All five prioritised CF's list areas of the Protocol that apply, most of which come under Annex 2 and sections in relation to State Aid and agricultural support for example. However, it appears that the Protocol applies in varying degrees. For example, with the Chemicals and Pesticides CF, the majority of EU legislation under the CF is listed under the Protocol, apart from the sustainable use of pesticides. This means NI will only apply the UK regime in relation to this one specific area, meaning that the rest is under EU regulation and governance.

#### **Potential questions:**

- Do all or parts of the EU legislation listed under the CFs and the Protocol apply? E.g. the Single Use Plastic Directive was added to Annex 2 of the Protocol, however not all the Articles apply. (See [AQW 28770/17-22](#))
- Down the line could additions be made to the Protocol that completely removes NI from a UK CF? If so, what would happen? Are there areas where this is already the case?
- Who will monitor any additions and changes to the Protocol that might impact the implementation of a CF?
- What are the roles of the UK Government and NI Executive in the transposition of legislation under the Protocol?
- Does Article 12 of the Protocol make UK Government responsible for transposition/implementation “the *authorities of the UK shall be responsible for implementing and applying provisions of Union law made applicable by this Protocol to and in the UK in respect of NI*”?
- If UK Government fails to transpose an EU Directive to NI within the deadline, could NI or UK Government face infraction? In such instances what would infraction lead to? Historically this could have resulted in disallowance (i.e. EU claiming back funding support) but Northern Ireland is no longer in receipt of EU funding.
- Who helps address, and if needs be fund to resolve, any infractions proceedings?
- Could the [HM Treasury rule](#) (Principle 10) apply because it's a result of non- UK policy?

- What ability has NI to apply for derogations under the Annex 2 of the Protocol e.g. [HSENI](#) implies that comments on the EU creosote derogation consultation should be sent directly to the European Chemicals Agency (ECHA). Does this suggest NI should consult directly at EU level for derogations?
- What about derogations achieved previously for the UK e.g. professional use of [Dichloromethane](#) for paint strippers under REACH.? Do these still apply to NI under the Protocol? And what happens should Ireland achieve future derogations for a piece of legislation under the Protocol? Does NI have ability to apply for one to keep alignment with Ireland? How does it go about this, directly to the EU?

#### 4.5 Regulatory Divergence

It is becoming increasingly evident that rather than providing for common policy and standards across the UK, the CFs provide a framework and process to manage divergence and the impacts of it across the four governments. Examples, of similar statements used across the five CFs in this respect, include and are not limited to:

*As England, Wales and Scotland begin to operate and develop their own regime/s, it is recognised that the requirements of the Protocol on Ireland/ Northern Ireland (henceforth referred to as the Northern Ireland Protocol) could result in divergence between Northern Ireland, England, Scotland and Wales.<sup>30</sup>*

*Where one or more of UKG, the SG or the WG propose 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 Common Framework is intended to provide governance structures and consensus-based processes for considering and managing the impact of these changes.<sup>31</sup>*

*Where rules in Northern Ireland change in alignment with the EU, the Common Framework will form the basis of a mechanism to ensure consideration by the four governments of any changes, and will enable them to determine any impacts and subsequent actions arising from these changes.<sup>32</sup>*

The amount of crossover between each CF and the Protocol may also impact the degree of divergence over time between UK and NI. Especially should the UK choose to diverge from the EU and what is currently carried over from EU legislation to the current CFs.

In NI, the issue of divergence is greatly impacted by the Protocol. At present, most of the CFs implement existing EU legislation and international obligations which maintains

<sup>30</sup> Chemicals and Pesticide Policy Document (p.6)

<sup>31</sup> Ibid p.7

<sup>32</sup> Ibid

a status quo. However, the UK now has the ability make changes to its approach in these areas, without the influence of the EU. NI must continue to align with the areas listed under the Protocol. For some CFs, as explained above, this may be a considerable proportion of a CF, giving the opportunity for greater divergence in that area.

### **Divergence examples**

#### **Tattoo Ink under REACH**

From January 2022, the EU restricted the use of certain chemicals in tattoo inks and permanent make-up. These restrictions apply to NI through EU REACH under the Protocol, but not the rest of the UK

The UK is examining whether such a measure is appropriate for the UK, beginning with a call for evidence back in Autumn 2021. It remains to be seen whether the UK will follow suit and what impacts this will have on tattoo and PMU businesses in NI compared to UK counterparts who have more time to prepare, and who might face different restrictions altogether.

#### **Lead shot under REACH**

NI already has legislation for banning the use of cartridges containing lead for any shooting on or over wetlands. Scotland has similar restrictions, while [England](#) and [Wales](#) limit their restrictions to certain species. The EU has recently introduced [new regulations](#) similar to NI, bringing a ban on the use of lead in gunshot for any shooting in or around wetlands from 2023 and its sale from 2024. In addition, [The European Chemicals Agency](#) (ECHA) is proposing further restrictions on the use and sale of lead in all shooting and fishing.

NI will follow the EU's direction of travel with REACH under the Protocol. However, while the UK is considering plans, from 2021 it has begun a [2 year evidence gathering exercise](#). The UK Government plans to introduce a steadier, phased approach, suggesting a considerable time difference, which could also result in a different approach to that which will be implemented in NI from 2023 onwards.

This is also an example of where some Member States have gone beyond the EU requirements e.g. [Austria](#), [Germany](#), [Demark](#).

## Potential questions

- There appears to be ambiguity around the level of involvement of Parties, including NI, in relation to changes for example:
  - What exactly does “consideration” by the four governments mean and involve?
  - What does “determine” mean for NI in relation to impacts and actions arising from changes?
  - Terms such as “acknowledging policy divergence”<sup>33</sup> – is it enough to acknowledge?
- Who will monitor and inform NI Executive and DAERA of any changes? At what stage will they be brought into the process to make any “determination”?
- If divergence happens and NI requires more resources to align with EU, who helps with this – UK Government? Or will HM Treasury spending rule (Principle 10)<sup>34</sup> apply?
- Will any potential bi-lateral or multilateral agreement between the four governments help to address, not just acknowledge, divergence?
- Can divergence issues between UK and EU regulation be brought up at EU/UK Joint Committee level?
- Does the fact that NI can only attend EU/UK Joint Committee if Ireland attends, suggest there may be limitation for discussing UK/EU divergence issues at EU level?
- Divergence has been a managed issue within a number of policy areas covered by the CFs. The Animal Health and Welfare CF highlights some of the regional variations that existed across the UK in relation to specific EU regulations. Within this context, there clearly has been a level of acceptable divergence in the past. Is this likely to continue to be the case?
- Will there be an “acceptable level of divergence” moving forward, and if so who will decide and what criteria will they use?
- What about the areas of CF that apply to NI (i.e. not under Protocol), is there further need for consideration of the impacts of divergence between a UK regime and Ireland, either due to EU divergence or Ireland derogations? Will this be taken into consideration within the discussion, monitoring and operation of CFs? Who will be responsible to flag this initially, the UK government or DAERA?

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<sup>33</sup> Ibid p.9

<sup>34</sup> Principle 10: where decisions taken by any of the devolved administrations or bodies under their jurisdiction have financial implications for departments or agencies of the UK government or, alternatively, decisions of UK government departments or agencies lead to additional costs for any of the devolved administrations, where other arrangements do not exist automatically to adjust for such extra costs (e.g. if the Barnett formula doesn't apply), the body whose decision leads to the additional cost will meet that cost. See [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/943689/Statement\\_of\\_Funding\\_Policy\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943689/Statement_of_Funding_Policy_2020.pdf)



- Similar to some Member States in relation to lead shots (see blue box above). What would happen should Ireland decide to go beyond EU requirements in an area listed under the Protocol?

#### 4.6 Parliamentary scrutiny

In relation to the need for ongoing Parliamentary scrutiny, the House of Lords Common Frameworks Scrutiny Committee (CFSC) stated in its March 2021 report entitled “Common Frameworks: building a cooperative Union:

*Parliamentary scrutiny of common frameworks will need to continue even after they have been finalised to ensure that important policy decisions are made transparently. Parliamentary committees will need to have information on how the individual frameworks are operating in their respective policy areas, as well as on the common frameworks programme as a whole. We recommend that, to facilitate this, the four administrations should provide regular updates to their legislatures and publish reports as part of their planned reviews of the frameworks.*<sup>35</sup>

Commenting on this topic in its response to the CFSC, the UK Government stated:

*The Government agrees with the Committee’s recommendation that regular updates should be provided to legislatures, but notes the specifics of this are a matter for the individual UK Government and devolved administration departments which are parties to Common Frameworks to agree with the relevant Committees. The Government further notes that work is underway to develop guidance on the format for future routine reviews of Common Frameworks. Once complete, departments and their counterparts in the devolved administrations will be in a position to communicate the format for future reviews and updates to committees.*<sup>36</sup>

That being said, details across the five prioritised CFs in relation to Parliamentary Scrutiny, particularly at the monitoring and review/amendment stage appear relatively scant.

Details around the monitoring of CFs appear to differ slightly across the five prioritised CFs. Some suggest annual, quarterly, or an ad hoc basis and some don’t provide any detail on frequency of monitoring. While all five state that one of the purposes of monitoring is to assess compliance with the CF, only two (Agri Support and Plant health) appear to specifically mention that divergence and its impacts will also be a

<sup>35</sup> The House of Lords Common Frameworks Scrutiny Committee: Common Frameworks: Building a cooperative Union (31 March 2021) [https://publications.parliament.uk/pa/ld5801/ldselect/ldcomfrm/259/25910.htm#\\_idTextAnchor051](https://publications.parliament.uk/pa/ld5801/ldselect/ldcomfrm/259/25910.htm#_idTextAnchor051)

<sup>36</sup> UK Government, Government Response to the House of Lords Common Frameworks Scrutiny Committee report: Common Frameworks: building a cooperative Union’ (May 2021) <https://committees.parliament.uk/publications/6175/documents/68906/default/>



purpose. Of the three that provide detail (Agri support, Animal health, Plant health), monitoring is conducted at official level. However, there is no detail on monitoring reporting, both across the four governments or at Parliamentary scrutiny level.

The outcomes of monitoring will form any review and amendment to CFs. Review of the CFs is to take place between 2 or 3 years across the five CFs explored. However, most do mention that an “exceptional review” may be triggered by a “significant issue” agreed by all Parties. The Chemicals and Pesticide CF states that a “significant issue” fundamentally impacts the operation and/or the scope of the CF. In relation to NI a “significant issue” review may be triggered under Article 16 of the Protocol, should a “significant difference” arise causing economic, societal or environmental difficulties for NI. There appears to be limited detail on what constitutes a significant difference in this respect, and who decides if it is significant or not.

Reviews appear to be made at official policy level, with amendment sought at Working Group level. However, there is little detail as to whether Parliamentary scrutiny will be included at any of the review stages, or to be included as third-party advice. Animal health is the only one to provide detail for the setup of an independent review panel, whereas this is not mentioned in any of the others.

Of significance is a statement made in the Chemicals and Pesticide CF:

*Policy announcements affecting areas of devolved competence will not be made until the policies being announced have been formally agreed by the Parties concerned<sup>37</sup>*

**Potential questions:**

- Why are there differences in frequency of monitoring and review across the CFs?
- Are most of the monitoring and review of CFs conducted at civil servant level, with limited or no Parliamentary input or scrutiny?
- Does the level and frequency of monitoring and review depend on the nature of the CF, i.e. whether legislative or not?
- What reporting will accompany monitoring and review and will this be presented for scrutiny to the Northern Ireland Assembly?
- Does the quotation above suggest that devolved Parliaments will only be informed of policies once formally agreed? Will Parliaments have opportunity to scrutinise policies once formally agreed?
- What level of involvement will the Northern Ireland Executive and Assembly have with determination of a significant change at NI level triggering a review?
- Who will monitor any significant changes brought by EU legislation under the Protocol?

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<sup>37</sup> Ibid p.13

- Will NI Assembly have any say in what constitutes a “significant issue for NI”? Will it have the ability to raise this to the UK Government? Will there be a timeframe?
- Could we expect a similar process to EU Explanatory Memorandums and ability to raise subsidiarity issues?
- Is the guidance referred to in the Government’s response to the CFSC produced yet?
- If not when and will it cover Parliamentary scrutiny?
- Is it enough to have the only reference to Parliamentary scrutiny in legislation? Should it be included CF documents, concordat, MOU etc?

#### 4.7 Stakeholder engagement

The House of Lords CFSC Report noted their concern regarding the lack of stakeholder engagement in the development process of CF to date

*Common frameworks are weakened by the lack of inclusion of external stakeholders and should have been transparent from their inception. We were told that this process has been less transparent than the EU system it has replaced. Greater transparency could have been achieved through the publication of framework summaries during the initial development of each common framework and having an open stakeholder consultation process that reached out beyond the ‘usual suspects’.*

*...We recommend that the UK Government should make up for the lack of involvement of stakeholders in the initial development of common frameworks by revising them based on stakeholders’ feedback. Future reviews of the frameworks should include an open and well-publicised stakeholder consultation process that reaches beyond the small number of stakeholders previously consulted, so as to ensure that all those directly affected have a meaningful opportunity to contribute.<sup>38</sup>*

The UK Government responded that a wide range of stakeholders were involved in the initial design of CFs and their future working, however agreed that CF’s should be revised based on stakeholders’ feedback. That being said the UK Government also noted:

*... stakeholders should continue to be meaningfully engaged throughout the development of a UK Common Framework, including through periodic reviews where appropriate. However, since Common Frameworks are primarily about establishing and maintaining intergovernmental ways of working, rather than developing the policy itself, a full stakeholder consultation may not always be required. Stakeholder consultation on a*

<sup>38</sup> The House of Lords Common Frameworks Scrutiny Committee: Common Frameworks: Building a cooperative Union (31 March 2021) [https://publications.parliament.uk/pa/ld5801/ldselect/ldcomfrm/259/25910.htm#\\_idTextAnchor051](https://publications.parliament.uk/pa/ld5801/ldselect/ldcomfrm/259/25910.htm#_idTextAnchor051)

*'ways of working' document is a different task to a more general consultation on policy development. As Common Frameworks are not themselves policy documents, external stakeholder consultation has been undertaken jointly by the relevant departments in the UK Government and the devolved administrations in a targeted and specific way, to meet the unique needs of each Framework. To date, this targeted approach has enabled the most relevant and appropriate expertise to be brought to bear on each Framework, in preparation for the Framework to be published once it has been provisionally confirmed and sufficiently developed.<sup>39</sup>*

In relation to the five prioritised CFs explored, there appears to be very little detail in relation to stakeholder engagement, both in the development stages and any future review or amendment process. Taking the Chemicals and Pesticides CF as an example, it makes general reference to stakeholders feeding into decision making structures<sup>40</sup>. However, it appears to provide more detail on making announcements and delivering messages on decisions already made, rather than involvement at the decision-making stage:

*The Parties agree to deliver timely and consistent messages to stakeholders by utilising current methods of stakeholder engagement.*

*Methods for engagement with industry and other stakeholders will be reviewed and adapted to ensure, where necessary, all Parties are joined up in their stakeholder communication<sup>41</sup>*

Some of the CFs refer to third party advice at the review stage, however, there does not appear to be any mention of evidence gathering or consultation with stakeholders in the policy papers to date.

### **Potential questions**

- Does the UK Government response above suggest that stakeholder engagement will not change, based on the fact that CFs are not policy developing?
- Are most decisions, particularly decisions to diverge by UK, taken at civil servant and Ministerial level, with little opportunity for stakeholder engagement?
- Some CFs make general reference to stakeholders e.g. other UK Government departments, relevant agencies and bodies, devolved regulators, business etc<sup>42</sup>- will this include devolved Parliaments?
- Will stakeholder engagement at the UK and devolved government level be included at review stage? If so, when will more detail be provided on this?

<sup>39</sup> *Ibid*

<sup>40</sup> *Ibid* p.47/48

<sup>41</sup> *Ibid* p.33/34

<sup>42</sup> As an example see those mentioned in Chemicals and Pesticide CF p.27

- Or will stakeholder engagement be left up to discretion and responsibility of devolved governments? If so, at what stage, before decisions are made?
- Will CFs draw up stakeholder lists and consult on these?
- How did the governments engage with stakeholders in preparing the outline framework?
- How did NI Executive/ DAERA engage with stakeholders?
- Does the CF currently reflect the responses of NI stakeholders?
- If not, how will this be ensured in the future and conducted to a level of satisfaction by stakeholders, especially in relation to changes to the CF, divergence etc?

#### 4.8 Resourcing/finance

As already mentioned in section 2, according to the underlying principles for CFs, those principles are to deliver “a significant increase in decision-making powers for the devolved administrations”. It seems reasonably foreseeable that a “significant increase” in powers could necessitate an increase in DAs’ public expenditure.<sup>43</sup>

It therefore appears important to examine the contents of a particular provisional CF and their potential financial implications for the “public purse”, i.e. those that could be incurred to implement the CF, including both “one-off” and recurrent identifiable costs potentially impacting the public purse.

In its December 2019 report on CFs scrutiny, the [External Affairs and Additional Legislation Committee \(EAAL\) Committee recommended](#) that the Welsh Government should publish an explanatory memorandum alongside each provisional framework. It was also recommended that this should set out the policy objectives of the framework and give a financial impact assessment.<sup>44</sup>

The Fisheries Management and Support MoU is the only one of the five CFs to make specific reference to finance and shared costs implications. Detail on specific areas and approaches are to be made through operational agreements (OAs) in relation to that CF. However, all five CFs do not appear to include any detailed analysis of potential financial implications.

In relation to resourcing, all five make general reference to the need for resource consideration and management by all Parties. However there is no detail as to what resourcing implications might be. It does appear, however, that the level of resourcing across the five CFs could differ substantially depending on whether they require the set-up of new administrative and governance infrastructures, or the use of existing ones. For example, the setup of new Policy Collaboration Group (PCG) and Market

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<sup>43</sup> [The European Union Withdrawal Act and Common Frameworks.pdf \(publishing.service.gov.uk\)](#)

<sup>44</sup> Welsh Parliament Common Frameworks: a guide for researchers <https://senedd.wales/laid%20documents/cr-ld12915/cr-ld12915%20-e.pdf> (p.6/7)

Monitoring Group (MMG) fora under Agricultural support, potential for new independent review panel for Animal Health.

Where new infrastructures are to be introduced there is little detail on whether these will use existing arrangements, admin, secretariat etc.

### **Potential questions**

- What is the DAERA's assessment of potential financial implications arising for the public purse to implement these CFs, including those that could be one-off and recurrent?
- If any such consideration has been given, has that consideration involved engagement/discussion with the Department of Finance and/or the Executive; and if so, when did that occur; and what did it entail?
- What happens with divergence especially if EU laws require more resources for NI, will this be met by UK Government? Or will HM Treasury spending rule (Principe 10) apply here? For example, the EC has published a [Proposal for a Regulation on shipments of waste](#) which would require more controls compared to the rules currently retained by the UK. Defra have stated they will consult before deciding whether to transpose some, all, or adapt them<sup>45</sup>
- What happens if NI faces infraction proceedings by EU, how will resourcing needs be met?
- Similar to the Welsh EAAL Committee recommendation, does DAERA feel an Explanatory Memorandum (EM) with financial impacts assessment should accompany CFs?
- If so, who should be responsible for these, relevant NI Departments or UK Government?

## **5 Specific issues/considerations**

The majority of the issues for specific CFs are covered in the common observations section. However, the following section highlights some potential issues that are more specific to the individual five prioritised CFs.

### **5.1 Agricultural support**

- How does the CF sit with the Annex 6 provisions in the Ireland/Northern Ireland Protocol which effectively mean the UK-EU Joint Committee sets the maximum ceiling of support for agricultural production and trade in Northern Ireland? In effect, the ability of NI to diverge or not in this issue can happen in two spaces – which one has the final decision?

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<sup>45</sup> Lets Recycle [online] (Nov 2021) <https://www.letsrecycle.com/news/eu-shipment-rules-to-impact-rdf-defra-official-advises/>

- The Policy Collaboration Group (PCG) is supported by a rotating chair – how long is each period and when is DAERA up first? What powers does having the chair confer? Is this limited to setting the agenda? Are there any associated voting powers?
- Do all issues of ‘acceptable divergence’ require the double lock approval of senior officials and ministers – is consensus at both levels a stipulation or is a majority sufficient? With specific reference to NI can the DAERA minister act in such a way without wider Executive approval?
- CF monitoring is to be done by officials from parties but there is no indication of process in terms of detail – who decides if divergence contravenes principles or has been harmful? What criteria are to be used? Will the monitoring be a collective and agreed report? Will it be published? Is there any role for the Assembly/AERA Committee in scrutinising this?
- Review and amendment. It is not explicitly stated as to who undertakes a review and whether there is any role for Assembly/AERA Committee or wider stakeholders in this process. The suggestion of possible third-party involvement in terms of providing this is interesting but more clarity would be helpful – e.g. is the Assembly/AERA Committee a ‘government body’?
- Review and amendment. Who decides what constitutes a ‘significant issue’ for review and how? The only criteria provided would appear to be light on detail and is Ministerial consensus definitely a requirement?
- Inter-Governmental Relations – references are made throughout to IGR review and the fact that the outcomes of review will be incorporated into the CF, but when is this likely to happen and will this result in any significant changes? Would this primarily be to dispute resolution and review processes?

## 5.2 Chemicals and pesticides

- Is the sustainable use of pesticides the only area under this CF where NI will follow the UK regime? Are all the other areas of the CF under the Protocol, to which NI must align with the EU?
- Annex 1 refers to Directive 96/59/EC on PCB/PCT (Stockholm Convention), but the Protocol does not. Does NI align with the UK legislation for this?
- The legislation listed in Annex 1 for POPs (Regulation (EU) 2019/1021) appears to be different to that listed under the Protocol (Regulation (EC) No 850/2004 amending Directive 79/117/EEC. What does this mean for NI? Does NI apply to both regimes for POPs? What happens if there is crossover?
- Do all or parts of the legislation listed in Annex 1 of the FOA and the Protocol apply? E.g. the Single Use Plastic Directive was added to Annex 2 of the Protocol, however not all the Articles apply. (See [AQW 28770/17-22](#))
- The Outline Agreement and concordat state the CF is not intended to be legally binding or enforceable. Does the EU legislation and UK Environment Act (UK

REACH Enforcement Regulations) not mean there is legally binding and enforceable elements to the CF?

- The Outline Agreement refers to section 23 (chemicals) and 24 (pesticides and biocides) of the Protocol applying to this CF. Is this all the sections? What about others that crossover? For example, section 25 (shipments of waste) and 43 (Regulation of food and feed law)?
- If DAERA, the Health and Safety Executive Northern Ireland (HSENI) and the Department for Economy (DfE) will be responsible for the regulation of the chemicals regime in NI, how does this fit with the Office for Environmental Protection? What role will the OEP have and how will it operate alongside decision making and dispute resolution under the CF, and EU (for Protocol related legislation)?
- Will HSENI, DAERA and DfE answer to potentially 2 oversight bodies - the UK Government and EU?
- All parties participate in discussions, but are decisions to be made by the Health and Safety Executive (HSE) and the Environment Agency (EA) on behalf of devolved administrations? What about devolved counterparts HSENI and the Northern Ireland Environment Agency (NIEA)?
- How will cross over with other CFs be handled? E.g. Waste and resources in relation to hazardous shipments of waste:
  - Is there potential for significant divergence in relation to shipments of hazardous waste under the new EC [Proposal for a Regulation on shipments of waste](#) which would require more controls compared to the rules currently retained by the UK? Defra have stated they will consult before deciding whether to transpose some, all, or adapt them.<sup>46</sup>
  - Could, or has, this been discussed under CF governance mechanisms? If so, has DAERA been happy with the level of involvement, discussion and potential level of divergence?
- There appears to be a lack of detail on UKGCC membership, chair, who decides the chair and roles and membership.
- There appears to be a lack of detail on frequency of meeting of UKGCC.
- There appears to be a lack of detail on monitoring of the CF, especially in relation to the Protocol and changes with EU legislation.

### 5.3 Animal Health and Welfare

- The CF recognises the existing scope for legislative divergence within the UK in areas such as chicken stocking densities, Bovine TB policy and which animal diseases are notifiable. Given this established experience of dealing with policy variation/divergence does the Animal Health and Welfare CF provide an insight into

<sup>46</sup> Lets Recycle [online] (Nov 2021) <https://www.letsrecycle.com/news/eu-shipment-rules-to-impact-rdf-defra-official-advises/>

how divergence might be handled moving forward? Is this experience valid or will the GB – NI divergence issues be greater than any experienced previously?

- This is the most complex of the five prioritised CFs in terms of decision-making fora. The fora may also be subject to membership changes due to status e.g. ADPG ‘peacetime’ vs outbreak or incident roles. What challenges will this complexity and changes in status present for effective operation of the CF?
- The dispute resolution process outline includes references to potential input from EU/UK Joint/Specialised Committees that play a key role in the operation of the Ireland/Northern Ireland Protocol. At what level in the process and how?
- A key line within the framework reads – *‘If Northern Ireland has to diverge in order to maintain parity with the EU the same review process will be followed and the same assessments are made as whether it would be in the best interests of GB to follow suit or to allow divergence’*. How likely is it that GB will follow suit in such circumstances?

#### 5.4 Plant health

- The three decision making fora outlined in the CF are UK National Plant Protection Organisation (NPPO), UK Plant Health Risk Group (PHRG) and UK Plant Health Policy Group (PHPG). The CF suggests that the secretariat support for all three groups is, and will continue to be, provided by Defra. No mention is made of chairing arrangements for the fora. Does or could the chair rotate across the administrations?
- With the exception of the quarterly monitoring and enforcement activity by the NPPO, there is no indication given around the frequency in which the decision-making fora will generally meet. How often will all the fora meet?
- The outline agreement refers to audits of third countries and audits by third countries but there is no reference to this activity in the concordat – why the difference?

#### 5.5 Fisheries management and support

- Why the move away from the 2012 concordat to the current MoU? What drove this? Is the move away from a concordat to an MoU a retrograde step? How much of the 2012 concordat has made it/will make it into the MoU?
- The MoU refers to finance and shared costs, but there is no reference in the other four CFs considered here. Why is this? Does this imply that finance and costs are a more significant issue within this CF?
- There is lots of detail dealt with through Operational Agreements (OAs) in the CF – this is an additional key delivery mechanism structure not present in other CFs considered here. OAs are described as delivery documents which will be produced as required to support the MoU. Are the OAs subject to the same procedures set out in the MoU such as dispute resolution and review?



- Who decides when OAs are needed? There would appear to be grounds for further ones to be developed beyond potential ones listed in the annex of the MoU.
- Is there a formal link between the EU/UK Specialised Committee on Fisheries developed as part of the UK/EU TCA? If yes – what is this?
- The CF states that '*The policy area covered by this Common Framework intersects with the EU-UK Trade and Cooperation Agreement and therefore topics relevant to the framework may be considered from time to time by relevant TCA Specialised Committees or the Partnership Council.*' How will this work?
- Is there any role for EU/UK Joint Committee or Specialised Committees in relation to dispute resolution arising from divergence due to the Ireland/Northern Ireland Protocol? Does the mechanism set out in the Animal Health and Welfare CF have any potential relevance here?

### Appendix 1 – Table comparing main features of five AERA Committee prioritised CFs

	Agricultural support <sup>47</sup>	Chemicals and Pesticides <sup>48</sup>	Animal health and welfare <sup>49</sup>	Plant Health <sup>50</sup>	Fisheries Management and Support <sup>51</sup>
Publication	3/02/22	3/02/22 – policy paper Entry into effect under concordat – 31 Dec 2020	3/02/2022	3/02/2022	18/02/2022
Method of framework implementation	Primarily non-legislative agreement - concordat	Legislation- EU legislation UK Environment Act Non-legislative- concordat and any bi/multi-lateral agreements between 4 governments and regulators.	Non -legislative agreement – concordat	Non – legislative agreement - concordat	Legislative and non-legislative components – Memorandum of understanding (MoU) non-legislative  Succeeds a non-statutory ‘fisheries concordat’ developed by the four UK fisheries authorities in 2012
In line with CF principles developed by JMC(EN)	No evidence presented to confirm within CF	Apparently – but questions in relation to all 3 Principles in relation to NI	No evidence presented to confirm within CF	No evidence presented to confirm within CF	References made to necessity for CF due to Section 1 of the JMC principles
Scope/legislation	Concordat scope is restricted to agricultural policy which previously fell under the CAP in EU law which is now retained as follows: <ul style="list-style-type: none"> <li>Regulation 1305/2013 – rural development</li> </ul>	Chemicals and pesticides (as applied by EU) but not major hazards. NI scope- limited to sustainable use of fertilizers as not under Protocol	Concordat applies to all Animal Health and Welfare legislation in the UK – too extensive to list here  Officials have agreed that the whole of AHW legislation will be within scope unless	Concordat applies to retained EU plant legislation including: <ul style="list-style-type: none"> <li>Regulation (EU) 2016/2031 – plant health</li> <li>Regulation (EU) 2017/625 – official controls</li> </ul>	Legislative and non-legislative components.  Legislative: <ul style="list-style-type: none"> <li>UK Fisheries Act 2020</li> <li>Retained EU law – mainly EU Common</li> </ul>

<sup>47</sup> [Agricultural support common framework Provisional framework outline agreement and concordat, Cabinet Office website, February 2022](#)

<sup>48</sup> [Chemicals and Pesticides Provisional Common Framework Outline Agreement and Concordat, Cabinet Office website, February 2022](#)

<sup>49</sup> [Animal Health and Welfare Common Framework Provisional Framework Outline Agreement and Concordat, Cabinet Office website, February 2022](#)

<sup>50</sup> [Provisional UK Common Framework on Plant Health Provisional Framework Outline Agreement and Concordat, Cabinet Office website, February 2022](#)

<sup>51</sup> [Fisheries Management and Support Common Framework Provisional Framework Outline Agreement and Memorandum of Understanding, Cabinet Office website, February 2022](#)

	<b>Agricultural support<sup>47</sup></b>	<b>Chemicals and Pesticides<sup>48</sup></b>	<b>Animal health and welfare<sup>49</sup></b>	<b>Plant Health<sup>50</sup></b>	<b>Fisheries Management and Support<sup>51</sup></b>
	<ul style="list-style-type: none"> <li>Regulation 1303/2013 - common provisions</li> <li>Regulation 1306/2013 – horizontal</li> <li>Regulation 1307/2013 – direct payments</li> <li>Regulation 1308/2013 – single CMO</li> <li>Regulation 1370/2013 – aid and refunds under CMO</li> </ul> <p>Also subordinate legislation in form of delegated and implementing acts.</p> <ul style="list-style-type: none"> <li>Also provisions under UK primary legislation : Agriculture Act 2020</li> </ul>		<p>explicitly agreed otherwise by decision making bodies.</p> <p>Examples of areas explicitly within scope include:</p> <ul style="list-style-type: none"> <li>any AHW legislation and policy including veterinary medicines</li> <li>issues from other frameworks e.g. FFSH have an influence in AHW</li> <li>areas of diverging policy</li> <li>that the policy area is the responsibility of a single AHW body in all or some of the Parties and as a result a collaborative approach is required.</li> <li>that updating policy changes at different times across the UK would affect the Common Frameworks principles agreed at JMC(EN) in October 2017</li> </ul>	<ul style="list-style-type: none"> <li>Regulation (EU) 2019/2072 – phytosanitary conditions</li> </ul> <p>Also UK primary legislation in form of Plant Health Act 1967</p> <p>Also domestic devolved legislation including:</p> <ul style="list-style-type: none"> <li>Northern Ireland: Plant Health (Official Controls and Miscellaneous Provisions) Regulations (Northern Ireland) 2020</li> </ul>	<p>Fisheries Policy (CFP) enabling</p> <ul style="list-style-type: none"> <li>Joint Fisheries Statement</li> <li>Secretary of State Fisheries Statement</li> <li>Fisheries management plans</li> </ul> <p>Non-legislative:</p> <ul style="list-style-type: none"> <li>Memorandum of Understanding</li> <li>Operational Agreements (OAs):</li> <li>❖ Single Issuing Authority</li> <li>❖ Fish Export Service</li> <li>❖ Fisheries Management Operational Agreements</li> <li>❖ Fisheries Science</li> <li>❖ Subsidies Grants and Future Funding</li> </ul> <p>Framework also operates alongside existing wider marine management framework which pre-dates EU exit including:</p> <ul style="list-style-type: none"> <li>UK Marine Strategy</li> <li>Marine Policy Statement</li> <li>Marine Plans</li> </ul>
Agreed principles for concordat/MoU operation	<p>Yes</p> <ul style="list-style-type: none"> <li>Parties commit, wherever possible to conduct business in</li> </ul>	<ul style="list-style-type: none"> <li>Agreed high-level principles – e.g. democratic accountability all</li> </ul>	<p>Yes</p> <ul style="list-style-type: none"> <li>Good working relationships between the parties</li> </ul>	<p>Yes</p> <p>Working arrangements designed to maximise consensus based decision</p>	<p>Yes</p> <ul style="list-style-type: none"> <li>Fisheries management is devolved</li> </ul>

	<b>Agricultural support<sup>47</sup></b>	<b>Chemicals and Pesticides<sup>48</sup></b>	<b>Animal health and welfare<sup>49</sup></b>	<b>Plant Health<sup>50</sup></b>	<b>Fisheries Management and Support<sup>51</sup></b>
	<p>an open and collaborative manner, primarily via the PCG and MMG but reserve the ability to use other approaches and channels where necessary</p>	<p>Parties; UK chemicals regime; sharing information; respect dispute resolution process .</p> <ul style="list-style-type: none"> <li>• Governance - New UK Chemicals Governance Group (UKGCC) with working groups sitting underneath.</li> <li>• Regulators role – consistent delivery of international obligations. HSENI and DAERA enforce the CF’s regulatory regimes in NI</li> <li>• Decision making – clear, transparent to all Parties</li> </ul>	<p>are vital to the effective delivery of the AHW framework. Parties will co-operate to the fullest possible extent to achieve this aim....</p> <ul style="list-style-type: none"> <li>• Emphasises respect for devolution settlements</li> </ul> <p>Parties agree number of objectives/principles:</p> <ul style="list-style-type: none"> <li>• Timing</li> <li>• Consultation</li> <li>• Impacts of decisions</li> <li>• Transparency</li> <li>• Evidence</li> <li>• Risk assessment</li> </ul>	<p>making under number of areas:</p> <ul style="list-style-type: none"> <li>• Provision of information</li> <li>• Collaboration</li> <li>• Co-ordination</li> <li>• Trade promotion and co-operation</li> </ul>	<ul style="list-style-type: none"> <li>• Reserved matters – recognition some areas are reserved</li> <li>• Mutual respect</li> <li>• Shared responsibility</li> <li>• Information sharing</li> <li>• Dispute resolution – respect the agreed process</li> </ul>
<p>Areas covered by Concordat/MoU</p>	<ul style="list-style-type: none"> <li>• Agricultural spending</li> <li>• Marketing standards</li> <li>• Crisis measures – PI and PSA</li> <li>• Cross border holdings (within UK) – including regulation and enforcement</li> <li>• Data collection and sharing</li> <li>• Linkage with the Food Compositional Standards and Labelling (FCSL) Framework Outline</li> </ul>	<ul style="list-style-type: none"> <li>• Biocidal Products (BPR),</li> <li>• Classification, Labelling and Packaging (CLP),</li> <li>• Detergents,</li> <li>• Persistent Organic Pollutants (POPs),</li> <li>• Plant Protection Products (PPP),</li> <li>• Prior Informed Consent (PIC),</li> <li>• Mercury, and</li> <li>• United Kingdom Registration, Evaluation,</li> </ul>	<ul style="list-style-type: none"> <li>• Trade in animals and related products</li> <li>• Exotic disease</li> <li>• Endemic disease</li> <li>• Emerging disease</li> <li>• Animal Welfare</li> <li>• Animal Breeding Controls</li> <li>• Animal ID and Traceability</li> <li>• Registration and licensing of holdings</li> <li>• Protection of the Food Chain</li> </ul>	<ul style="list-style-type: none"> <li>• Imports into and movements within the UK of plants and plants products including wood and wood products</li> <li>• UK risk assessment of new plant pests and outbreak management</li> <li>• Assurance of auditing of policies across GB to protect plant biosecurity</li> </ul>	<ul style="list-style-type: none"> <li>• Sustainable management of fisheries and related marine management</li> <li>• Access to fishing opportunities</li> <li>• Enforcement</li> <li>• Data collection</li> <li>• Financial support</li> </ul>

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	Agreement and WTO AoA	Authorisation and Restriction of Chemicals (UK REACH).	<ul style="list-style-type: none"> <li>• Transmissible Spongiform Encephalopathies and Animal By-products</li> <li>• Aquatic animal health</li> <li>• Veterinary Professional Regulation</li> <li>• Professional Qualifications</li> <li>• Veterinary Medicines</li> </ul>	<ul style="list-style-type: none"> <li>• Exports of plants and plant products from the UK</li> </ul>	
Reference to Belfast/Good Friday Agreement	<ul style="list-style-type: none"> <li>• Annex A -Joint Ministerial Committee (EU Negotiations) Communique, October2017 – ‘Common Frameworks will adhere to Belfast Agreement</li> </ul>	<ul style="list-style-type: none"> <li>• Annex A -Joint Ministerial Committee (EU Negotiations) Communique, October2017 – ‘Common Frameworks will adhere to Belfast Agreement</li> </ul>	<ul style="list-style-type: none"> <li>• Respect will be paid to the devolution settlements and the democratic accountability of each of the UK Administrations, including the provisions of the Good Friday Agreement including the NI/RoI dimension in Strand 3 of that Agreement.</li> </ul>	<ul style="list-style-type: none"> <li>• Annex 2: High Level Principles</li> <li>• 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</li> </ul>	<ul style="list-style-type: none"> <li>• No specific references</li> <li>• Talks of respecting devolution settlements whilst allowing for divergence</li> </ul>
Legislation	No new legislation beyond amendments to retained EU law and associated powers in UK Agriculture Act 2020	Retained EU law for chemicals and pesticides (listed in Annex 1 FOA).	All existing domestic and retained EU law in the areas of animal health and welfare.	Retained EU law outlined previously plus the following International commitments	Provisions under the UK Fisheries Act 2020 and retained EU legislation relating to CFP

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		UK Environment Act ( <a href="#">s.140</a> ) – allows SOS to amend UK and REACH Enforcement Regs.	Also international commitments outlined previously		International commitments
Links to other frameworks	References the following: <ul style="list-style-type: none"> <li>• Plant health</li> <li>• Organics</li> <li>• Fertilisers</li> <li>• Chemicals and pesticides</li> <li>• Plant variety and seeds</li> <li>• Zootechnics</li> <li>• Animal health and welfare</li> <li>• Food compositional standards and labelling</li> </ul>	<ul style="list-style-type: none"> <li>• Resources and Waste Common Framework for UK REACH, mercury, and POPs; and</li> <li>• the Food and Feed Safety and Hygiene Common Framework, given the potential risk to human health posed by pesticide residues in food.</li> </ul>	References the following: <ul style="list-style-type: none"> <li>• Food and feed safety and hygiene – referenced as an example, suggesting links to others.</li> </ul>	References the following: <ul style="list-style-type: none"> <li>• Plant variety and seeds</li> </ul>	None referenced
International obligations	<ul style="list-style-type: none"> <li>• WTO – Agreement on Agriculture</li> <li>• Ireland/Northern Ireland Protocol</li> </ul>	<ul style="list-style-type: none"> <li>• Stockholm Convention: use of POPs.</li> <li>• Rotterdam Convention: export of hazardous chemicals</li> <li>• Basel Convention: transboundary movements of hazardous wastes and disposal.</li> <li>• The Minamata Convention - mercury and</li> </ul>	<ul style="list-style-type: none"> <li>• WTO – Sanitary Phytosanitary committee obligations</li> <li>• OIE – four animal health standards</li> </ul>	<ul style="list-style-type: none"> <li>• WTO – Sanitary and Phytosanitary (SPS) Agreement</li> <li>• International Plant Protection Convention (IPPC)</li> <li>• Trade agreements to which the UK is a party</li> </ul>	<ul style="list-style-type: none"> <li>• UN Convention on the Law of the Sea (UNCLOS)</li> <li>• Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR),</li> <li>• UN Fish Stocks Agreement (UNFSA),</li> <li>• Convention on Biological Diversity (CBD)</li> </ul>

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		<p>mercury compounds.</p> <ul style="list-style-type: none"> <li>United Nations Global Harmonised System (GHS) – classifying, labelling hazardous properties of chemicals, implemented through CLP and REACH.</li> </ul> <p>Implemented in UK through UK legislation. In NI through EU legislation.</p>			<ul style="list-style-type: none"> <li>UN’s Sustainable Development Goal’s (SDGs)</li> <li>Rio Declaration on Environment and Development</li> <li>Work in Fishing Convention 2007 (ILO188),</li> <li>Convention on the Conservation of Migratory Species of Wild Animals (CMS),</li> <li>WTO rules, for example on subsidies</li> </ul>
Specific areas of Ireland/Northern Ireland Protocol impact	<ul style="list-style-type: none"> <li>Article 5(4) – EU law applies in areas including agri-food marketing standards</li> <li>Article 10 – state aid</li> <li>Annex 5</li> <li>Annex 6 – agricultural support</li> </ul>	<ul style="list-style-type: none"> <li>Section 23 chemicals and related;</li> <li>section 24 Pesticides, biocides (PPP and BPR);</li> </ul>	<p>Annex 2 paragraphs:</p> <ul style="list-style-type: none"> <li>36 – live animals, germinal products and products of animal origin</li> <li>37 – animal disease control, zoonosis control</li> <li>38 – animal identification</li> <li>40 – animal welfare</li> <li>43 – official controls, veterinary checks</li> <li>44 – sanitary and phytosanitary other</li> </ul>	<p>EU plant health regime continues to operate in Northern Ireland</p> <p>Annex 2 paragraphs:</p> <ul style="list-style-type: none"> <li>41 – plant health</li> </ul>	<p>Annex 2 paragraphs:</p> <ul style="list-style-type: none"> <li>46 – Fisheries and Aquaculture</li> </ul>
Decisions making – key joint decisions	<ul style="list-style-type: none"> <li>Deciding which policy recommendations are to be escalated</li> </ul>	<ul style="list-style-type: none"> <li>Priority setting by all Parties- subject to approval by</li> </ul>	<p>More complex due to the number of decision-making fora and the fact that fora existed prior to EU exit</p>	<p>Not as clear as other frameworks.</p>	<p>Not as clear as other networks but the following are referenced in relation to</p>

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made through framework	<p>to Ministers individually or collectively</p> <ul style="list-style-type: none"> <li>Deciding that no issues need to be escalated if a new or changing policy causes divergence and level of divergence is acceptable</li> <li>Deciding when an expert view would be beneficial to assess any contradiction with JMC principles</li> <li>Deciding whether, when and in what form a crisis specific group should be formed – or disbanded</li> <li>Reviewing and recommending amendments to the framework or deciding which can be made without recourse to more senior fora</li> </ul>	<p>Ministers across 4 governments.</p> <ul style="list-style-type: none"> <li>Resource allocation – all Parties will participate in discussions UKGCC. To be managed by agreement between Parties where relevant.</li> <li>Programme of work by UKGCC – to include work programme and priorities of UK regime for year ahead.</li> </ul>			<p>non-legislative components of MoU and OAs:</p> <ul style="list-style-type: none"> <li>wide range of fisheries management issues, including control and enforcement, sharing data and science, and international negotiations</li> </ul>
Decision making fora	<ul style="list-style-type: none"> <li>UK Agriculture Policy Collaboration Group (PCG) – primary body</li> <li>UK Agriculture Market Monitoring Group (MMG) – decides on what to escalate to PCG</li> </ul>	<ul style="list-style-type: none"> <li>Working Group– Chemicals Delivery Board (CDB), Biocides Delivery Board (BDB), Plant Protection Products Delivery Board (PDB) - day</li> </ul>	<ul style="list-style-type: none"> <li>Animal Disease Policy Group (ADPG)</li> <li>Animal Welfare Policy Group (AWPG)</li> </ul>	<ul style="list-style-type: none"> <li>UK National Plant Protection Organisation (NPPO) sits above UKPHRG– involved if issue or recommendation before UKPHRG has</li> </ul>	<ul style="list-style-type: none"> <li>Senior Steering Group (SSG) - Primary decision making body</li> <li>SSG can also commission working groups or short term task and</li> </ul>



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	<ul style="list-style-type: none"> <li>PCG can also establish crisis specific sub group on ad hoc basis with policy, analytical and senior representation.</li> </ul>	<p>to day discussions between Parties. Decides which issues go to UKGCC.</p> <ul style="list-style-type: none"> <li>Expert Committee on Pesticides Residues in Food (PRiF) and the UK Expert Committee on Pesticides (ECP) bring issues to Delivery Boards.</li> <li>UKGCC - Strategic decisions and issues not solved at WG/DB. Issues may be escalated to Defra Senior Officials Programme Board (SOPB).</li> <li>Ministers and IMG-Efra - Higher level decisions made by Ministers e.g. those of legislative requirement, contentious, or political level, review and amendment decisions. Disputes under the CF may be brought to Ministers through inter-Ministerial Group for Efra</li> </ul>	<ul style="list-style-type: none"> <li>Aquatic Animal Health Policy Group (AAHPG)</li> <li>TB Liaison Group (TBLG)</li> </ul> <p>Advisory/discussion rather than decision making fora:</p> <ul style="list-style-type: none"> <li>Four Chief Veterinary Officers (England, Scotland, Wales and Northern Ireland)</li> <li>Veterinary Risk Group (VRG)</li> <li>Outbreak Readiness Board (ORB)</li> <li>Disease Emergency Response Committee (DERC)</li> <li>Policy Officials</li> </ul>	<p>wider policy, stakeholder or business/trade implication.</p> <ul style="list-style-type: none"> <li>UK Plant Health Risk Group (UKPHRG) – primary body for most decisions – advises NPPO.</li> <li>UKPHRG also supported by technical sub groups that draft policy proposals for decision at UKPHRG.</li> <li>UK Plant Health Policy Group has a role – day to support to the framework and leads on Reviews and Amendments to framework</li> </ul>	<p>finish groups to consider specific</p>

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		Parties will collaborate to develop criteria to determine when regulatory decisions, issues, or information should be escalated to the UKCGG, or to the working groups sitting under it. These will be developed, agreed, and reviewed by the UKCGG as required			
Decision making fora membership	<p>PCG and MMG members will be Deputy Director (SCS1) level</p> <p>Routine business can be delegated to officials at lower grade in the case of MMG analytical officials</p> <p>Unclear as to level of staff that will participate in crisis specific sub groups</p>	UKGCC - comprised of Defra, HSE, EA and DAs	<p>Animal Disease Policy Group (ADPG):</p> <ul style="list-style-type: none"> <li>Senior officials from range of bodies including CVOs, Policy leads for various areas etc – extensive</li> </ul> <p>Animal Welfare Policy Group (AWPG):</p> <ul style="list-style-type: none"> <li>Policy officials and CVOs from Defra, Scottish Government, Welsh Government and Northern Ireland executive</li> </ul> <p>Tuberculosis Liaison Group (TBLG):</p> <ul style="list-style-type: none"> <li>Four CVOs, TB policy leads from each administration and Animal and Plant Health Agency</li> </ul>	<p>UK NPPO – made of Chief Plant Health Officers from each region of the UK.</p> <p>UKPHRG – made up representatives from Defra, APHA, Forestry Commission, Scottish Government, Welsh Government and DAERA – no indication of grade.</p> <p>UK Plant Health Policy Group – made up of representatives from Defra, Forestry Commission, Scottish Government, Welsh Government and Northern Ireland.</p>	SSG – membership shall consist of relevant key senior officials from each party.

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			<p>(APHA) representatives. Other officials can be involved but are not involved in decision making.</p> <p>Aquatic Animal Health Policy Group (AAHPG):</p> <ul style="list-style-type: none"> <li>• Policy leads across administrations – (Northern Ireland - Director of Marine and Fisheries + Policy lead/team Aquaculture and Fish Health Policy)</li> <li>• Also optional members such as Head of Fish Health Inspectorate, scientific advisers, trade experts, lawyers, Food Standards Agency (FSA)</li> </ul>		
Frequency of fora mtgs	<ul style="list-style-type: none"> <li>• MMG – every 2 months</li> <li>• PCG – either every month or 3 months – not clear</li> </ul>	No detail	<ul style="list-style-type: none"> <li>• ADPG meets 4 times per year – additional if required</li> <li>• AWPg- meets monthly with CVOs attending bi monthly. Chair rotates between administrations with Defra</li> </ul>	<p>No indications as to how often the fora will meet to deal with decisions</p> <p>NPPO to meet quarterly in relation to monitoring and enforcement</p>	<p>SSG TOR available on request – might contain this information</p> <p>Suggestion that SSG will meet ‘regularly’ – but not defined</p> <p>No details on other fora Responsibility for chairing the SSG and any associated</p>

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			providing secretarial and admin support. <ul style="list-style-type: none"> <li>TBLG – meets four times per year – 2 mtgs chaired by England TB Programme Deputy Director – other 2 by hosting CVO</li> <li>AAHPG – meets four times per year – additional if required</li> </ul>		working groups and providing the secretariat will be agreed between the fisheries policy authorities.
Decision making fora new?	Yes Although previous structures still remain such as Agricultural Support Framework Policy Collaboration Group and Paying Agency groups	UKGCC is new. Delivery boards already existed.	No	No	SSG appears to be new but builds upon existing
Local ministerial involvement in decisions?	Yes <ul style="list-style-type: none"> <li>Some decisions arising from PCG and MMG discussions can require recommendation made to Minister – assumingly for approval- but not clearly stated</li> </ul>	Yes <ul style="list-style-type: none"> <li>Ministers may receive advice from their officials either concurrently as issues arise, or in the course of business as usual.</li> <li>Ministers may accept reject advice.</li> <li>If work is sent to senior officials and an issue remains unresolved, the issue may be</li> </ul>	Yes <ul style="list-style-type: none"> <li>informed by decision making fora where agreement has been reached by officials or where agreement isn't necessary</li> <li>If Minister is content – implementation occurs</li> <li>If Minister isn't content returns to fora to escalate or suggest path of resolution</li> </ul>	Yes <ul style="list-style-type: none"> <li>If necessary, the UK NPPO Group will ask their respective Ministers for a decision</li> </ul>	Yes <ul style="list-style-type: none"> <li>Ministers may receive advice from their officials either concurrently across the Parties as issues arise or in the course of business as usual for an individual Party.</li> <li>Ministers may agree or disagree with advice.</li> <li>If work is remitted to senior officials and an issue remains</li> </ul>

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		<p>escalated to Ministers.</p> <ul style="list-style-type: none"> <li>Ministers may consider issues under the framework's dispute avoidance and resolution process via inter-ministerial groups meetings or correspondence.</li> </ul>			<p>unresolved, the issue may be escalated to ministers. Where ministers are considering issues as part of the framework's dispute avoidance and resolution mechanism this could be via several routes, including inter-ministerial meetings or by correspondence.</p>
Escalation of decisions - principles	<p>Focus on dispute avoidance rather than resolution</p> <p>Key distinctions in process</p> <ul style="list-style-type: none"> <li>Difference of view – has no impact on decisions taken by another party</li> <li>A Disagreement – requires some resolution – ideally at official level</li> <li>A dispute – must be escalated from PCG and MMG level for resolution and/or refers to a decision made by one party that has been made with an unwanted impact on another party</li> </ul>	<p>Emphasis on avoidance</p> <p>Alternative views /interpretation/opinions between 2 or more Parties are acceptable provided they don't negatively impact operation of regime or ability to meet CF principles (Annex 2). E.g. a letter of clarification between the Parties may resolve a concern or potential issue.</p> <p>The dispute resolution process should be utilised only when agreement cannot be reached. In some areas, commonality will not be needed in order to meet the JMC (EN) principles and</p>	<p>Key focus on seeking consensus building upon history within Animal Health and Welfare of administrations working together and seeing the value in doing so.</p> <p>On this basis dispute resolution process is expected to only be needed in a small number of cases.</p> <p>Also within AHW commonality of approach is not necessarily required to meet CF principles – agreement to disagree with potential mitigation may be appropriate for some issues</p> <p>Key distinctions in process:</p>	<p>No references to distinctions</p> <p>Emphasis issues being discussed and resolved at earliest stage possible.</p>	<p>Emphasis on resolving issues at lowest level possible.</p> <p>Distinction as follows: Difference – processed at policy lead 1:1 level – has no impact on decisions taken by another party ↓ Disagreement – processed at working group and SSG level – requires some resolution – ideally at official level ↓ Dispute – processed at SOPB, IMG and IGR levels – must be escalated from SSG level for resolution and/or refers to a decision that has been made with an unwanted impact on another party</p>

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		<p>therefore an ‘agreement to disagree’ would be acceptable. Where a disagreement arises at a working group level, it will be referred to the UKCGG.</p> <p>If unresolved:</p> <ul style="list-style-type: none"> <li>Efra issues go to Senior Officials Programme Board (SOPB). If still unresolved goes to IMG-Efra.</li> <li>Non- Efra issues go to Senior Responsible Officer (SRO) level, and escalated to Ministers if still unresolved.</li> </ul> <p>If unresolved at highest CF level – referred to IGR</p> <p>When an alternative view arises at either the working group level or the UKCGG, the facts of the case will help determine a reasonable time period to resolve the dispute.</p>	<ul style="list-style-type: none"> <li>Differences – can arise at any level, even Ministerial, intention will always be to resolve difference without elevating it to a dispute</li> <li>Dispute – if a difference can’t be resolved will progress as a dispute to ministerial level</li> </ul>		
Dispute resolution phases	<p>PCG/MMG ↓ Senior Officials Programme Board (SOPB) ↓</p>	<p>Working Group level – CDB, PDB, BDB ↓ UKGCC ↓ SOPB (Efra) SOR (non-Efra)</p>	<p>Triggered when officials can’t reach consensus for either a common approach or appropriate divergence on a policy issue. Also triggered by a complaint from one or</p>	<p>Triggered when a proposed policy measure is perceived to have a negative impact, such as where divergence between parties is not agreed.</p>	<p>Triggered by a disagreement on a decision</p> <p>Policy lead 1 to 1s ↓ Working Groups</p>

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	<p>Ministerial level – either IMG (EFRA) or bilateral between parties in dispute ↓ IGR process</p>	<p>↓ IMG-Efra or Ministers (non-Efra) ↓ IGR process</p>	<p>more parties around another party not complying with aspect of the agreed framework.</p> <p>Policy officials ↓ Level 1 – ADPG/AWPG/AAHPG/TBLG ↓ Level 2 – Defra Senior Officials Programme Board (SOPB) ↓ IMG (EFRA) ↓ Ministerial Dispute Process (IGR?)</p> <p>Reference is also made to the EU/UK Joint/Specialised Committees potentially needing to present their views in order to highlight the impact on NI and GB interactions as a result of policy in relation to the Ireland/Northern Ireland Protocol– called upon when relevant.</p>	<p>UKNPPO ↓ Senior Officials Programme Board (SOPB) ↓ IMG (EFRA) ↓ IGR process</p> <p>IGR cited as method of last resort to be applied for only the most serious issues incapable of being resolved at portfolio level</p>	<p>↓ CF/Devolved Administrations Senior Steering Group ↓ Senior Officials Programme Board (SOPB) ↓ EFRA Inter-Ministerial Group (IMG) ↓ Appropriate Intergovernmental structures</p>
Monitoring	<p>Annual monitoring of CF in addition to monitoring in course of routine business.</p> <p>Conducted by officials from the parties</p> <p>Monitoring to assess:</p>	<ul style="list-style-type: none"> <li>meeting statutory responsibilities and international obligations to protect the environment, animal health and human health;</li> </ul>	<p>ADPG will monitor the functioning of the Framework and assess any new needs of the Framework on an ad hoc basis convened when necessary.</p>	<p>NPPO meets quarterly to strategically monitor the framework</p> <p>Monitoring to assess:</p> <ul style="list-style-type: none"> <li>Inter gov co-op and collaboration as result of framework</li> </ul>	<p>No details</p> <p>Reference made to an OA on monitoring and enforcement that will support the MoU. Not clear that this monitoring relates to the actual</p>

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	<ul style="list-style-type: none"> <li>• Inter gov co-op and collaboration as result of framework</li> <li>• Whether parties are implementing and complying with CF</li> <li>• Whether divergence has taken place in contravention of the CF principles</li> <li>• Whether harmful divergence has taken place that impacts on the policy are covered by the framework.</li> </ul>	<ul style="list-style-type: none"> <li>• transparent assessment and agreement on resources;</li> <li>• all Parties are fulfilling their duties under the Concordat.</li> </ul> <p>The outcome of monitoring will inform the next review and amendment process.</p>	<p>ADPG should agree what information is required and with what frequency to provide assurance that the framework is operating effectively.</p>	<ul style="list-style-type: none"> <li>• Whether parties are implementing and complying with CF</li> <li>• Whether divergence has taken place in contravention of the CF principles</li> <li>• Whether harmful divergence has taken place that impacts on the policy are covered by the framework.</li> </ul>	<p>operation of the MoU however.</p>
Review of CF	<p>Yes – 2 or possibly 3 types –</p> <ul style="list-style-type: none"> <li>• annual/3yearly eventually</li> <li>• upon introduction of new primary leg/ or material change</li> <li>• exceptional</li> </ul> <p>Reviews require consensus at each stage</p> <p>Third parties can be used by any party to provide advice at any stage</p> <p>Failure to reach agreement in review or amendment stage – parties can raise a dispute through CF avoidance and resolution mechanism.</p>	<p>The Review Amendment Mechanism (RAM) relies on consensus at each stage of the process from the Ministers responsible for the policy areas in Concordat.</p> <p>Review of the CF every 3 years</p> <p>Exceptional review may be triggered by a ‘significant issue’ and must be agreed by all Parties</p> <p>Should a significant difference arise, which would lead to economic, societal, or environmental difficulties for NI, under Article 16 of the Protocol this would trigger a ‘significant issue’ review.</p>	<p>Yes</p> <p>Parties agree to ADPG initially holding an annual review – ADPG could be replaced in role.</p> <p>After initial annual review up to relevant decision makers to decide review frequency.</p> <p>Requests to amend framework should be raised with ADPG</p> <p>Also an option for an independent review panel to be brought in to review the framework – ADPG would collectively agree body</p>	<p>Yes</p> <p>UK Plant Health Policy Group will maintain overview of the operation of the Framework, and in consultation with the parties, may seek to amend it guided by advice from NPPO</p> <p>2 types of review – routine or exceptional</p> <ul style="list-style-type: none"> <li>• Routine every 2 years</li> <li>• Exceptional – triggered by a significant issue</li> </ul> <p>Reviews require consensus at each stage</p>	<p>Yes</p> <p>SOG has responsibility</p> <p>MoU will be reviewed as required, and at a minimum within three years of adoption.</p> <p>A review may also be initiated at any time by any Party.</p> <p>Any changes to the MoU must be agreed by all signatories to the MoU.</p> <p>The OAs associated with the MoU are live business as usual documents that by their nature will be reviewed frequently to respond quickly to changing circumstances.</p>



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				<p>Third parties can be used by any party to provide advice at any stage</p> <p>Failure to reach agreement in review or amendment stage – parties can raise a dispute through CF avoidance and resolution mechanism.</p> <p>Failure to reach agreement in review or amendment stage – parties can raise a dispute through CF avoidance and resolution mechanism.</p>	
Reference to finance/costs	No – but references to managing resources	No - but reference to all Party discussions around resource allocation. No details on what these might be.	No – but references to managing resources	No – but references to managing resources	<p>Yes</p> <p>The four fisheries policy authorities recognise the need to come to an equitable and fair sharing of costs where a shared approach is being undertaken, 36understanding that the distribution of costs may vary depending on the matter at hand. Approaches to specific areas will be covered within the relevant OAs</p>