



HOUSE OF LORDS

Common Frameworks Scrutiny Committee

House of Lords

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The Rt Hon George Eustice MP
Secretary of State for Environment, Food and Rural Affairs
Department for Environment Food & Rural Affairs
Seacole Building
2 Marsham St
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Dear George,

Thank you for your letter of 23 March replying to our questions about the Fertilisers Provisional Framework. It clarified many of the issues the Committee were concerned about. We are now writing to provide our final recommendations.

Thank you for providing the paragraph of the Protocol on Ireland/Northern Ireland relevant to the framework, and for clarifying that an editing error was responsible for its omission. However, this again highlights a problem we have persistently encountered with DEFRA frameworks: that there appears to be a lack of proofing and of final checks before provisional frameworks are published. Simple editing errors should not be able to penetrate frameworks if they have been rigorously checked before publication, as you said they are in your [letter of 7 March](#). We also noticed other editing errors in the framework. The 'Decision making Flow Diagram' on page 10 is unreadable as it is in black and white, meaning the key is unclear and it is impossible to know which are the 'yes' arrows and which are the 'no' arrows. Page 10 also contains a heading 'Diagram showing the dispute resolution process', yet no diagram is provided. However, the heading does seem to correspond to the text below it.

The Committee feels that these basic failures in presenting the framework indicate a more significant departmental failure. High-quality, transparent, and consistent common frameworks are essential for successful intergovernmental working; and to provide strong foundations for a cooperative Union. They must be taken seriously and all efforts should be made to draft them carefully and accurately. We recommend that far greater effort is taken to ensure all frameworks are drafted to a high standard before they are approved.

We recommend that the editing issues outlined above are corrected in the framework. The diagram on page 10 should be in colour and the heading 'Diagram showing the dispute resolution process' should be removed or corrected to 'The dispute resolution process'.

We remain concerned about the lack of acknowledgement of the need for communication with the Irish Government on this framework. While we appreciate that frameworks are cross UK governance arrangements, fertilisers are a cross-border issue that require cross-border engagement, and as such this should be reflected in the framework since it will no doubt feed into policy discussions within the framework. We must emphasise that the island of Ireland is considered a single epidemiological unit on matters concerning animal health, and therefore fertilisers.

We recommend the opinion and feedback of the Irish Government is sought on this common framework, and that the Irish Government is treated as a key stakeholder in future reviews of the framework.

We recommend that the framework is updated to outline the processes used to facilitate communication between Northern Ireland and the Republic of Ireland on matters relating to fertilisers.

We still lack clarity following your letter's discussion of the dispute resolution process outlined in the framework. We asked you to provide clarity on the role of senior officials in the decision making and dispute resolution process. In the fifth paragraph of your letter, you state that in the dispute resolution process, "any dispute between parties would not proceed directly from policy officials (the UKFRC) to the SOPB; hence the establishment of the Fertiliser Liaison Group. This group comprising senior officials (Grade 5 level) would seek to mediate on any disputes before any further escalation." This suggests that the Fertiliser Liaison Group, made up of senior officials, are the first real stage of the dispute resolution process, an idea reflected on page 10 and page 15 of the framework. However, in the seventh paragraph of your letter, you say that "The Fertiliser Liaison Group is referring to the UKFRC and we will amend to that effect for clarity. The dispute resolution process should start by discussion at the UKFRC between officials. After a dispute cannot be solved here it should be escalated to the SOPB". This is completely contradictory, and as such it is impossible to know how the dispute resolution process is supposed to work. In light of the persistent concerns we have expressed to you about inconsistencies in frameworks, the inconsistency in departmental letters again suggests that the Common Frameworks Programme is not being taken seriously by the Government. It also suggests the levels of bureaucracy in the framework are causing confusion even to those who have drafted the framework.

The dispute resolution process of a framework must be clearly outlined to be effective, yet both the framework and your letter fundamentally fail to provide this clarity. We recommend that the framework is updated to provide clarity on the dispute resolution process.

We welcome your clarification on paragraph 10.6 of the framework that is intended to refer to the fact that a new senior officials policy group does not need to be established because of the SOPB.

We recommend that the following is removed from the framework, as it causes unnecessary confusion: "There is no specific senior official group that exists for fertilisers with regard to decision making. Policy officials also consider that there is no need for a specific senior official group only for fertiliser related decisions."

In [previous correspondence](#) with you, you said that “it may become necessary to gather independent UK wide evidence to inform policy, and this may require a new or existing body to provide this evidence base in an independent manner. The FRC is the main body that has been formed and it will be within their remit to decide whether any decision making powers or operational roles will be delegated to other bodies, either existing or new, in the future as part of the functioning of any new regulatory framework.” This information is not reflected in the framework.

We recommend that the framework is updated to include information about the FRC.

The Committee was disappointed to see that the process for agreeing exclusions from the UK Internal Market Act 2020 was not contained in the framework. We appreciate that you have already told us that your officials would work closely with other government departments and the devolved administrations to see if the text could be included. We reiterate that the UK Internal Market Act exclusions process must be set out in relevant frameworks as paragraph 2b of the exclusions process guidance states. Failure to do so jeopardises respecting the autonomy of the devolved administrations within their areas of competence. It should be clearly set out in relevant common frameworks as an essential process agreed for the wider Programme.

We recommend that the framework is updated to include text setting out the UK Internal Market Act exclusions process.

We are disappointed to note the absence in this framework of any commitments on ongoing engagement with Parliament. We note the absence of any commitments in the texts of these frameworks to publish reviews of the frameworks or to update legislatures on the outcomes of reviews. The Government has separately committed to improving transparency in Intergovernmental Relations. Transparency in this area should include regular statements to legislatures on the functioning of these frameworks.

We recommend that the framework should be updated to include a commitment to update the House of Lords, House of Commons and the three devolved legislatures on the ongoing functioning of the framework after the conclusion of the scheduled reviews.

We were concerned by the use of language on page 4. This was with respect to the UK Government facilitating the attendance of the devolved administrations at UK-EU meetings, where the agenda includes an item concerning implementation in an area of devolved competence. Currently, the text states that the UK Government “should facilitate” the attendance of the devolved administrations at such meetings. While international agreements is a reserved area, the implementation of international agreements remains devolved. Every effort should be made to respect the devolution settlements and ensure the devolved administrations are present at such meetings. This would also ensure adherence to

the JMC principle that common frameworks will “lead to a significant increase in decision making powers for the devolved administrations.”¹

We recommend that the framework is updated to state that the UK Government “will” facilitate the attendance of the devolved administrations at EU-UK meetings, where an agenda item concerns implementation in an area of devolved competence. This would ensure adherence to the JMC principles underpinning the Common Frameworks Programme and that the devolution settlements are respected.

We understand that each of the four governments are currently receiving views on this Provisional Framework from their respective legislatures. We therefore look forward to your response to this letter once these have been received, and our recommendations have been considered, together with the final version of the framework.

Yours sincerely,

Baroness Andrews
Chair of the Common Frameworks Scrutiny Committee

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Joint_Ministerial_Committee_communique.pdf