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Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd



Llywodraeth Cymru
Welsh Government

Paul Davies MS
Chair
Economy, Trade and Rural Affairs Committee

Paul.davies@senedd.wales

28 April 2022

Dear Paul,

Thank you for your letter of 30 March, regarding the Fertilisers Common Framework ('the Framework').

I am pleased to provide responses to the questions raised. Questions have been grouped where they have been addressed by a single response.

Scope of the Framework

To clarify the scope of the framework and whether it relates solely to the management of regulation previously governed by the EU or all fertiliser regulation and policy?

The Framework has been drafted to support the effective regulation of fertilisers across the UK, now that the Transition Period has ended, including in relation to:

- retained EU legislation;
- domestic legislation;
- communication and decision-making processes between the Parties (the four Governments of the UK) in relation to fertilisers; and
- the functioning of EU legislation as applicable in Northern Ireland under the Northern Ireland Protocol.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Fertiliser policy and legislation covers the rules on the import, export, sale or use of fertilisers in the UK, including:

- definitions;
- compositional limits;
- detonation resistance;
- labelling requirements;
- sampling and analysis procedures;
- processes for compliance and enforcement relating to fertilisers; and
- requirements that apply to importers and exporters.

The Framework also covers the gathering of technical and scientific evidence around fertilisers, stakeholder engagement, policy making processes and design, as well as enforcement and market surveillance coordination.

Any materials applied to land to enhance crop growth have the potential to fall under the scope of the Framework. The focus of the Framework relates to the manufacture and marketing of fertilisers. Organic fertilisers would need to be considered on a case-by-case basis by the UK Fertiliser Regulatory Committee (UKFRC).

To confirm whether regulations related to the control of agriculture pollution would come within the scope of the common framework?

In respect of the development of policies and legislation relating to the type of controls on the use of fertilisers prescribed by the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021, it is expected these would be shared with Members of the UKFRC, in accordance with the ways of working and procedures established by the Framework. However, this would generally be for information purposes only. Members of the UKFRC are aware of these Regulations, and of similar regulatory regimes in England, Northern Ireland and Scotland, and no matters have arisen in respect of these in the operation of the provisional Framework to date.

If all, to explain how this differs from how fertilisers law and policy was governed prior to the UK's exit from the EU?

The Framework formalises existing governance arrangements. Officials from each UK nation had already been holding meetings and discussing fertiliser policy developments before the creation of the Framework, but without any written governance mechanism.

To confirm if the Welsh Government has the same flexibility to develop fertilisers law and policy it had before the end of the transition period?

The Welsh Government's ability to legislate and develop policy in respect of fertilisers has not diminished following the end of the transition period.

To set out what other frameworks this framework interacts with and how those interactions will be managed?

This Framework may interact with other Common Frameworks, including those on air quality, chemicals and pesticides, organic production and integrated pollution prevention and control. The members of the UKFRC will be responsible for identifying and managing any interactions, in line with the procedures set out in the Framework.

Decision-making in the Framework

To provide examples of the kinds of decisions on policies and laws that will be taken through the framework?

EU Regulation 2019/1009, on the making available on the market of EU fertilising products (the FPR), which has a staggered application, will replace Regulation (EC) No 2003/2003 in the EU once it fully applies in July 2022. This will introduce a new conformity assessment regulatory regime for EU fertilising products, which will regulate a broader range of materials than are currently regulated as EC fertilisers. The FPR will establish contaminant limits on particular fertilisers within the EU. This represents a major shift in fertiliser regulations in the EU, which the UK was involved in developing prior to leaving the EU.

It is generally accepted domestic legislation for the manufacturing and marketing of fertilisers, including retained EU law, needs to be updated, bringing a wider range of products into scope and embedding consistent standards into production and marketing rules. Some articles of the FPR applied before the end of the Transition Period and action was taken to implement those articles in GB where required by way of the Fertilising Products Regulations 2020.

Updating domestic legislation on fertilising products, for the manufacturing and marketing of a wider range of fertilisers and to maintain access to fertiliser supplies from the EU, is anticipated to be the focus of the work carried out under the Framework over the coming years. Policy and legislation development will be needed in respect of controls over the import, export, sale or use of fertilisers in the UK, including limits on contaminants, sampling and analysis procedures and enforcement.

To give an example of how the six objectives outlined in the framework will be used to make decisions under the framework?

The development of any domestic legislation will need to take account of the overarching objectives. Consideration will need to be given to the composition requirements of fertilisers to ensure levels of potentially harmful contaminants allowed are appropriate in the development of any revised legislative regime. Fertilising materials not currently covered by fertiliser legislation may be considered for inclusion, to ensure the safety of those materials.

This could include the potential of including standards for organic fertilising products to provide an improved regulatory framework, to facilitate innovation and a circular economy approach. The composition requirements provided by any new legislation should take into account the human health and environmental implications of potentially harmful contaminants.

Any revised fertiliser regime would need to ensure producers, users and enforcement bodies understand and comply with the requirements. Such an approach necessitates the creation and maintenance of a suitable regulatory environment. The development of new legislation would be informed through consultation with stakeholders, to ensure legislation is fit for purpose, practicable and enforceable.

The following three questions have been grouped:

To clarify which will be the main groups involved in decision making and why the framework makes inconsistent references to them?

The descriptions of who will be involved in dispute resolutions are unclear. Can you set out which structures and groups will be involved in dispute resolution?

Can you clarify the role of the UK Fertilisers Regulatory Committee (UKFRC) versus the role of the Fertilisers Liaison Group? Who will chair the UKFRC?

There are a number of decision-making processes, each requiring the involvement of different groups. The UKFRC is the only group involved in relation to policy or legislative decisions, where members of the UKFRC agree and which do not involve divergence. Where there is disagreement or divergence, this is escalated to the Fertiliser Liaison Group.

Officials routinely involve their own senior officials on issues of potential importance and would continue this normal working practice in relation to framework matters, including issues surrounding divergence even where all officials agreed at UKFRC level. In terms of dispute resolution, any dispute between parties would not proceed directly from policy officials (the UKFRC) to the Senior Officials Programme Board (SOPB), hence the establishment of the Fertiliser Liaison Group. The Fertiliser Liaison group, comprising senior officials (Grade 5 level), would seek to mediate any disputes before any further escalation. The membership of the Fertiliser Liaison Group is dependent on whether the disagreement relates to policy or the functioning of the Framework. Defra policy officials will take on the responsibility for chairing meetings of the UKFRC.

The role of senior officials and, where called upon, the Fertiliser Liaison Group is to provide an additional layer of support between officials who form part of the UKFRC and the escalation route of decisions or disputes to the SOPB or Ministers and is part of each government's normal working arrangements.

No new group will be formed to only deal with fertiliser related decisions or disputes since an existing group, the SOPB, already provides this function across multiple policy areas. Senior officials will be involved in decision making on policy and legislative decisions. They will not be required to communicate or meet during the decision making process. They would however be required to meet as a group during any dispute resolution. The formal senior officials Fertiliser Liaison Group will only be called upon for dispute resolution.

All governments are committed to promoting collaboration and the avoidance of disagreements, facilitated by new intergovernmental machinery, including circumstances where governments disagree about the interpretation of, or actions taken in relation to, matters governed by intergovernmental agreements, rules or procedures, which includes Common Framework Agreements.

Managing divergence through the framework

Different terms are used to describe divergence in the framework. On what basis will parties to the framework decide whether any proposed divergence is 'acceptable' or 'harmful'?

When a decision taken by one Party has the potential to undermine the policy objectives of another, the divergence would be regarded as harmful. An example would be where less stringent compositional standards in one of the nations could lead to environmental pollution of cross-border waterbodies. Acceptable divergence could occur, for example, where different compositional standards would not have any significant implications.

Can you explain how divergence between Great Britain and Northern Ireland will be managed through the framework, given that Northern Ireland will be required to follow new EU regulatory structures on fertilisers?

The Framework reflects the specific circumstances in NI that arise as a result of the Protocol and remains UK wide in its scope. As such, decision making and information sharing will always respect the competence of all Parties to the Framework and in particular the provisions in Article 18 of the Protocol on democratic consent in Northern Ireland.

Where one or more of UK Government, the Scottish Government or the Welsh Governments 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 Framework provides governance structures and consensus-based processes for considering and managing the impact of these changes.

As rules evolve to meet the emerging regulatory needs of the Welsh, Scottish and UK Governments, the Framework will ensure the full participation of Northern Ireland in discussions such that the views of the relevant Northern Ireland Executive Minister(s) are taken into account in reaching any policy or regulatory decisions by the UK, Scottish or Welsh Governments.

Where rules in Northern Ireland change in alignment with the EU, the 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.

The Dispute resolution process detailed in the Framework can be triggered, should it be considered necessary.

To explain why the framework doesn't provide timeframes for decision making and if there is a risk this could delay decision making processes?

The Framework underpins ongoing policy development in the area of fertilisers, potentially covering changes from minor guidance amendments to wide-ranging, innovative approaches. Timeframes for decision making and regulatory interventions will be subject specific and it would not be appropriate to establish these within the Framework. The setting of timescales for specific work areas would usually be shared with or determined and agreed by the UKFRC.

Other frameworks outline that the parties should consult each other on proposed policy changes even before they conduct stakeholder engagement on proposed changes. Is this the case for this framework?

The 'Ways of Working' established by the Framework recognise the importance of communication between the four governments, including the implementation of a 'no surprises' policy. As such, it is expected the UKFRC would be consulted prior to stakeholder engagement where possible.

The Welsh Government has said they expect the MoU on Devolution to become ‘dormant’ as new IGR structures are put in place. Can you explain implications of this for this framework?

In January 2022, the Welsh Government, along with the UK Government, the Scottish Government, and the Northern Ireland Executive, agreed to use the package of reforms which emerged from the joint Inter-Governmental Relations Review (IGRR) as the basis for the conduct of intergovernmental relations. While the reform package does not entirely replace the existing Memorandum of Understanding on Devolution, it is anticipated this will become a largely dormant document. In future, we hope that the Review and the package of reforms will be codified in a new MoU and, if all governments agree, underpinned in statute. For the time being, policy formulation will be developed in line with the current Devolution MoU. Alongside this, there may be minor amendments made to the Framework during its finalisation or following review to ensure it aligns with the definitions and processes outlined in the outcome of the IGRR.

Dispute resolution

No timescales are set for dispute resolution. Is there a risk this could impact delivery of policy and law in Wales?

Timescales for the resolution of any disputes will be subject to the nature and complexity of the dispute. The dispute resolution process may play an important role in challenging and testing policy and legislative proposals, which should be seen as potentially beneficial for the delivery of outcomes in Wales. Welsh agriculture relies heavily on cross-border supply chains, so if the Welsh Government were not to adequately discuss policy proposals with the other UK nations, it could harm Welsh businesses or consumers and then may require policy revision, lengthening the process. However, where disputes are referred to the Inter-Governmental Relations Secretariat, timescales have been established for consideration of the referrals.

In which circumstances will parties be able to ‘agree to disagree’? What risks have you identified with this approach?

Ministers are able to act in accordance with available powers. The Framework does not fetter the ability of Welsh Ministers to make decisions in a timely manner.

UK Internal Market Act 2020

How does the framework interact with the UK Internal Market Act?

Future policy will consider on a case-by-case basis whether there will be an intersect with the UK Internal Market Act (UKIMA) and what the effect will be. It is still too early to fully understand the impact of the UKIMA on the Framework.

Does the Welsh Government intend to seek an exclusion for this framework from the UK Internal Market Act?

There are no intentions to request an exclusion.

Impact on Law and Policy

The following two questions have been grouped:

Will the Agriculture Bill contain provisions on fertilisers? If so, have these proposals been through the framework process? If not, is this because of decisions taken through the framework?

If provisions are being made in the Bill, how will these align with the commitment in the framework to use regulatory powers on fertilisers in line with the frameworks principles?

The Agriculture Act 1970, as amended by the Agriculture Act 2020, provide adequate provision for changes to be made to fertilisers regulations, including by Welsh Ministers.

Transparency and accountability

Did you consult stakeholders in the development of the framework?

Stakeholders were consulted in February 2021 on a summary of the Framework. No concerns were raised. Further stakeholder engagement is planned following the elections in Northern Ireland on 5 May 2022.

Stakeholder engagement is included as a key objective for the framework but no processes are contained within it for stakeholders to be involved in decision-making, evidence gathering or review and amendment. Can you explain why and how this will be addressed?

The Welsh Government has established processes for stakeholder engagement, which differ from those of other nations. It would not be appropriate for a different process to be established for the purposes of the Framework. The Framework objective to develop strong and fruitful stakeholder relationships complements and builds upon the commitment of the four governments to involve stakeholders in policy and legislation development.

The framework outlines that wholesale reform of fertilisers regulation is forthcoming and the framework will be reviewed in light of this. How will you involve the Senedd in any review and amendment process?

There is a commitment to consistent reporting on Common Frameworks post-finalisation. The details are currently being worked through at an official level. Review points are scheduled into each Common Framework. It is expected that these will give the Senedd additional opportunities to engage in the development and evolution of Common Frameworks. The Interministerial Standing Committee will monitor the progress of the Common Frameworks programme to fulfil the role given to it by the joint Review of Intergovernmental Relations to 'Provide oversight of the Common Frameworks programme and its governance arrangements'.

The expectation is that reports on Common Frameworks will be public documents once they are signed off by portfolio Ministers and will be made available to the relevant committees in the four nations as well as relevant stakeholders.

In addition there is a commitment to inform the Senedd:

- of disputes raised through the Common Frameworks
- when disputes are escalated to Ministers
- and stakeholders of upcoming review points and consider recommendations by the Senedd and stakeholders as part of the same review process
- of any new legislation affecting the Common Frameworks; and
- of any applications for an exclusion under UKIMA.

Other Questions

The framework consists of a number of errors, unexplained and inconsistent terms. Can you explain why these were not addressed through internal sign off processes prior to publication?

Time constraints may have been a factor behind textual errors and inconsistencies. Any such errors will be corrected in the final version of the Framework.

I trust the responses provide sufficient detail and clarity on the scope and operation of the Framework and I look forward to further discussions with you on Common Frameworks in the future.

Regards,

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping initial 'L'.

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