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Llywodraeth Cymru
Welsh Government

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Chair: Economy, Trade and Rural Affairs Committee
Welsh Parliament
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28 April 2022

Dear Paul,

Provisional Common Frameworks for Plant Health and Plant Varieties and Seeds

Thank you for your letter of 30 March requesting further information and/or clarification on a number of matters relating to provisional Common Frameworks for Plant Health and Plant Varieties and Seeds. Responses to the questions posed by the Committee are set out below.

General Points

Why are Common Frameworks needed for plant health and plant varieties and seeds?

The four Governments agreed separate Common Frameworks are required for both these areas to ensure consistency and coherent approaches between administrations and to help manage divergence across regimes.

Both frameworks are in policy areas with close links to other common framework areas, such as animal health and welfare, public health protection and health security, and food and feed safety and hygiene. How will the connections between these frameworks be managed?

Connections can be identified and managed through representation in the different governance structures which support other Frameworks. Within the wider EFRA portfolio, structures are in place to allow matters shared across or affecting a number of Frameworks to be discussed as needed. This can be undertaken through the Inter-Ministerial Group for Environment, Food and Rural Affairs (IMG-EFRA) or the Senior Officials Programme Board which supports it.

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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.

Making decisions and managing divergence

Can you describe how decision-making processes in this area have changed since the UK's exit from the EU?

Plant Varieties and Seeds:

Decision making processes have had to take into account UK-wide, GB-wide and England, Northern Ireland, Scotland and Wales only statutory instruments (SIs) and rules (SRs) which have been amended or developed so that the existing statute book on Plant Varieties and Seeds legislation remains operable. In response to the Northern Ireland Protocol legislation has been introduced to separate the variety list for the UK so that two lists now apply on a GB basis and on a Northern Ireland basis. Decisions are therefore taken to add varieties to the GB and / or NI list by the GB administrations jointly and by Northern Ireland rather than on a joint UK basis. GB-wide legislation has been made which brings across powers to grant equivalence recognition of another country's certification processes on an administrative basis, by Ministers, for the main food and feed crops through an authorisation. It also brought across a number of specific legislative functions previously exercisable by the European Commission and the European Council in relation to EU marketing legislation for fruit, vegetable and ornamental plant material. These functions were missing from domestic law and enable each GB Government to make legislative changes to domestic legislation for fruit, vegetable and ornamental plant material.

Principal decision-making remains with the Plant Varieties and Seeds Committee (PVSC) to coordinate a UK approach for Plant Breeders' Rights, variety registration, and marketing and certification of seeds and other plant propagating material. It has responsibility for the National Lists and Seeds Committee (NLSC). The NLSC now manages the variety registration process explained above on a GB and NI basis and advises on technical aspects of listing referred to it by the PVSC.

Plant Health:

Decision making processes have had to take into account UK-wide, GB-wide and England, Northern Ireland, Scotland and Wales only statutory instruments (SIs) which have been amended so that the existing statute book on plant health legislation remains operable. The four Governments have committed to work together to develop policy on matters of mutual interest, through consensus-based decision making.

To that end, Welsh Government officials attend a number of working groups to discuss plant health regulation and policy and to coordinate responses to plant health threats. The UK Plant Health Risk Group (PHRG) and the UK National Plant Protection Organisation (NPPO) group are the two main decision-making bodies within the Plant Health Framework. Both existed in some form before the UK left the EU. However, additional resources and reorganisation of existing structures were needed to manage the functions returned to the UK from the EU. Activities and responsibilities of the PHRG were delegated to sub-groups to allow the PHRG to focus on decision making, with detailed and technical discussions taking place in these sub-groups. These technical discussions would have previously taken place at EU plant health working groups.

New groups have been created to capture all functions that returned to the UK following the UK's exit from the EU. These include, the Plant Health Outbreak Readiness Board and its sub-groups, the Plant Health Market Access Working Group, the Free Trade Agreement and Trade and Co-operation Agreement Coordination Group, the Science Coordination Working Group and the Forest Reproductive Material Working Group.

Both Frameworks provide for the governments to take decisions jointly on law and policy. How will you ensure that this does not limit the role of the Senedd or stakeholders in making law and policy for Wales?

Some existing domestic legislation regulating aspects of plant varieties and seeds require 'the National Authorities' (Welsh Ministers, the Secretary of State, Scottish Ministers and the Northern Ireland Department) to act jointly. However, the majority of legislation covering plant health and plant varieties and seeds is made on a Wales only basis, or by the Secretary of State with the consent of Welsh Ministers. The Senedd is engaged through these legislative processes as normal.

Welsh stakeholders will continue to input into policy development and discussions, for example through the Plant Health Advisory Forum or the Wales Plant Health Evidence and Advisory Group. Stakeholders are generally consulted at an early stage of policy development. The sub-groups to the UK PHRG frequently engage with stakeholder groups, for example to inform options for new/amended measures against pests or to inform priorities for market access.

If a government wishes to diverge, the Frameworks provide for there to be different impact assessments for plant health and plant varieties and seeds. On what basis have these criteria for assessment been chosen?

The Parties to the Plant Varieties and Seeds Framework have jointly concluded that any investigation into the impacts of potential divergence should at least consider impacts on the functioning of the internal market, international trade, and international obligations. This approach will allow the Parties to consider how divergence would affect the domestic marketing of seed and plant material and to ensure that we meet our international commitments via UPOV (The International Union for the Protection of New Varieties of Plants) and OECD. It will also allow us to assess what the implications would be for international trade and obligations. If one Party identifies a new policy or measure will have an unacceptable impact on any of these areas, and the matter cannot be resolved by the PVSC, this may trigger the dispute resolution mechanism.

For Plant Health, divergence needs to be technically justified, for example as a result of the threat posed by particular pest risks. A pest risk assessment could show that a particular pest would have greater impacts on one Party than the others, for example because of the plants or trees at risk, geography or climate. The UK Plant Health Service will take account of differences in pest and disease prevalence across the UK which justify different protective measures, and this may result in divergence being preferable. Any divergence would need to be in line with the JMC (EN) Frameworks principles and take into account impacts on consumers, UK trade and international obligations, and plant health protection in GB/UK, including biosecurity considerations.

Who will carry out the assessments?

For plant varieties and seeds, the PVSC will be tasked with considering the impacts of divergence and agreeing an approach. This might also include commissioning assessments from the NLSC or its sub-groups.

For Plant Health, the UK Plant Health Risk Group is the decision-making body regarding pest risk assessments.

Would stakeholders be involved in making the assessment?

The involvement of stakeholders would be on a case-by-case basis as necessary.

The frameworks provide for relevant arm's length bodies to participate in decision-making groups. Some of these bodies (such as the APHA and the Forestry Commission) operate in Wales, but are not formally accountable to the Senedd. How will you ensure that the responsibilities and lines of accountability for different bodies are clear?

There is an agreement in place between APHA and Welsh Ministers, under Section 83 of the Government of Wales Act 2006 which covers both Plant Varieties and Seeds and Plant Health. This is in the process of being updated. The Memorandum of Understanding for the Cross-Border provision of Forestry Functions and Research Delivery establishes an agreed Framework for the roles, responsibilities, relationships and cooperation between Welsh Government and the Forestry Commissioners in relation to the regulation of Plant Health (Forestry) and Forest Reproductive Materials in Wales.

Plant Health

The framework states that it aims to maintain common rules on plant health. What scope for divergence does this offer compared to the position under EU membership?

The Parties to the Framework commit to common plant health rules across GB/UK, whilst continuing to allow divergence in line with the JMC (EN) Frameworks principles.

Unlike the plant varieties and seeds framework, this framework does not set an ambition for there to be minimum standards. Why is this?

Rather than setting minimum standards, the Plant Health Framework outlines shared objectives for all Parties. These relate to protecting plant health and facilitating trade in plant materials. Through the Framework, parties are committed to work together to achieve these objectives and are guided by them.

Plant health legislation is amended in response to the threat posed by certain pests, where technically justified. Where the risk level of a particular pest is considered high, or there are uncertainties, a detailed Pest Risk Analysis is conducted, following internationally prescribed standards. Through this process, several criteria will be considered before an assessment of the risk is developed and decisions about legislative change are made.

How have you engaged with the development of the Plant Biosecurity Strategy for Great Britain through the framework?

Welsh Government officials have been working closely with officials in Defra, Scottish Government and DAERA through the Biosecurity Strategy Working Group and Steering Group to develop the biosecurity strategy. Officials have contributed to drafting the consultation on the strategy, engaging Welsh stakeholders and shaping the joint Government response to the consultation. Officials will continue to work together through the Framework to finalise the strategy in the coming months.

Can you describe the role of Natural Resources Wales in plant health policy?

Natural Resources Wales (NRW) delivers Welsh Ministers' plant health (forestry) functions through an arrangement under Section 83 of the Government of Wales Act 2006. NRW carries out terrestrial disease control in relation to woodlands and trees on the public forest estate.

Why is Natural Resources Wales not represented in the framework's governance groups?

As NRW acts as a delivery body for Welsh Ministers, it attends appropriate delivery level meetings, For example Incident Management Team meetings in relation to tree disease outbreaks.

Plant Varieties and Seeds

The framework states that it aims to maintain minimum standards for seed marketing, and to enable a functioning UK internal market for seeds and plant propagating material. What scope for divergence does this offer compared to the position under EU membership?

The Framework will make no changes to the scope of existing divergence. The Parties to the Framework commit to maintaining minimum standards for seeds marketing, as set out in legislation, providing reassurance for our trading partners, whilst continuing to allow freedom for Parties to flex above these minimum standards in line with the JMC (EN) Frameworks principles.

The framework provides that the governments must inform each other at the earliest opportunity of proposals for changes to law and policy, before any public consultation. How will you ensure that this does not limit the role of the Senedd or stakeholders in making decisions about law and policy for Wales?

Changes to law or significant changes to policy would always be subject to consultation and the views of Welsh stakeholders will be taken into account. When making legislation using powers within the Plant Varieties and Seeds Act 1964 there is a duty on Ministers to consult with representatives of such interests as appear to be concerned before making regulation.

Four protocols on decision-making through the framework have not been published. Why is this, and when can publication be expected?

The protocols are still under development. The intention being that they are issued for technical stakeholder engagement later in 2022 and will be available in due course.

What does the review of the terms of reference for the National Lists and Seeds Committee and the Plant Varieties and Seeds Committee include, and when will revised terms of reference be published?

The review of the Terms of Reference aims to ensure the roles and responsibilities of both Committees align with the Framework. There is no plan to publish the Terms of Reference but they can be made available on request.

UK Internal Market Act 2020

What impact could the UK Internal Market Act 2020 have on Welsh law on plant health and plant varieties and seeds?

Future policy changes will be considered on a case by case basis to determine where the UK Internal Market Act 2020 "UKIMA" will intersect.

Do you intend to request any exclusions from the Act on plant health and plant varieties and seeds?

There are currently no intentions to request an exclusion.

International bodies and standards

With regards to the international elements of the frameworks, can you describe any new opportunities provided to the Welsh Government by the frameworks?

The development of Frameworks has increased the scope for such interaction between the relevant policy teams of the four Governments.

Decisions made under Framework on Plant Varieties and Seeds must be in line with the UK's international obligations. These includes being a signatory to the International Convention for the Protection of New Varieties of Plants (UPOV) and its membership of the Organisation for Economic Co-operation and Development (OECD) schemes for the Varietal Certification of Seed. The Framework sets out to establish common policy objectives and positions for engagement in international organisations. One of the four protocol documents (the international protocol document (in development)) will describe in more detail how coordination of UK positions at international fora is achieved via pre-meetings, in order to agree positions to proposals via designated representatives at international meetings.

Influence at UPOV is a key example for Plant Varieties and Seeds. Under the EU regime the UK were part of the Community Plant Variety Office (CPVO) representation to UPOV. The UK is now a standalone member so if the UK influences UPOV policy, other contracting parties such as the CPVO, and therefore other EU member states, will follow the agreed decisions at the international level.

EU and Northern Ireland

Can you describe how you will seek to influence UK positions at international bodies through each of these frameworks?

Each Framework sets out to establish common policy objectives and positions for engagement in international organisations.

For Plant Varieties and Seeds, one of the four protocol documents in development (the international protocol document) will outline how coordination of UK positions at international fora is achieved via pre-meetings, in order to agree positions to proposals via designated representatives at international meetings.

Can you provide an overview of how retained EU law on plant health and plant varieties and seeds in Wales has changed since the end of the transition period?

For both Plant Varieties and Seeds and Plant Health, a number of SIs were made in 2021 to make minor corrections and to remove references to Northern Ireland from previous EU Exit SIs. For example:

- The Animal Health, Plant Health, Seeds and Seed Potatoes (Miscellaneous Amendments) Regulations 2021 make operability amendments to ensure plant and animal health controls can operate effectively to protect biosecurity and support trade between Great Britain and the relevant third countries. For plant varieties and seeds this included minor corrections to domestic legislation on national listing and seed potatoes.
- The Fodder Seed, Vegetable and Ornamental Plant Propagating Material (Amendment) Regulations 2021 amend legislation concerning vegetable and ornamental plants and plant propagating material and fodder seed to remove provisions relating to Northern

Ireland which are no longer necessary in consequence of EU legislation added to paragraph 42 of Annex 2 to the Protocol.

- The Food, Animal Feed and Seeds (Miscellaneous Amendments and Transitional Provisions) (Wales) (EU Exit) Regulations 2021 insert transitional provisions into subordinate legislation applying in relation to Wales in the field of food and animal feed standards and labelling and relate to amendments to legislation made by other EU Exit statutory instruments. For seeds the regulations make a minor correction to the Seed Marketing (Wales) Regulations 2012.

How will you continue to monitor changes to EU law on plant health and plant varieties and seeds and assess the implications of divergence from the EU and Northern Ireland?

As EU Plant Varieties and Seed certification and marketing law continues to be applicable in Northern Ireland, officials regularly monitor updates coming out of the EU to enable consideration of future legislation. This could include further corrections to EU exit legislation, transferring missing powers from EU legislation into domestic law and making changes where EU decisions have been taken since the end of the transition period. Through the PVSC, the four Governments will consider implications of new EU legislation for Northern Ireland.

Divergence can be necessary in plant health as pest threats are often different for different geographical areas. Although GB legislation is only changed in response to pest threats to GB, new EU legislation is reviewed to understand what impacts there may be for GB and the Northern Ireland Protocol. Where rules in Northern Ireland change in alignment with the EU, the Framework enables the four Governments to consider the changes and to determine any impacts and subsequent actions arising from them.

How will you assess the risks and benefits of keeping pace with EU law compared to maintaining the status quo?

The risk and benefits to any potential changes in EU law will be assessed through the governance groups in each Framework. For Plant Varieties and Seeds, this will be through the PVSC with advice from its subgroup. The Plant Health Risk Group and its subgroups will consider and assess changes to EU law related to pests and diseases, alongside the evidence relating to those pest measures.

Are you content that the frameworks will provide for adequate Welsh Government engagement in discussions through the UK-EU institutional framework on plant health and plant varieties and seeds?

The development of Frameworks has increased the scope for interaction between the relevant policy teams of the four Governments. The Welsh Government will continue to promote Welsh interests in these areas through the Frameworks groups.

International Trade

Both frameworks provide that they will enable the governments to “consider any implications stemming from international trade which have a direct bearing on the operation of a Common Framework.” Do you consider that this gives the Welsh Government adequate involvement in UK positions on plant health and plant varieties and seeds during international trade negotiations?

The Frameworks are not intended as tools to influence international policy. However, Common Framework policy teams will assert Welsh interests in these areas through the Frameworks groups.

In relation to the UK-EU Trade and Cooperation Agreement, we understand that where a UK-EU meeting agenda includes an item concerning implementation in an area of devolved competence, the UK Government should facilitate Devolved Governments' attendance of a similar level to that of the UK Government representatives with final discretion as to the UK delegation a matter for the UK co-chair. We also understand that UK Government should engage the Devolved Governments as fully as possible in preparation for these meetings (such as meetings of the Specialised Committees) regardless of attendance, and on all relevant implementation matters.

The UK Plant Health market access working group will coordinate trade promotion and cooperation. Can you provide more information on the remit, membership and activities of this group?

This group progresses and tracks the priority actions for awareness raising identified through the Risk Register and Pest Risk Analysis process. It coordinates shared campaign strategy and intelligence between the four Governments, APHA, and the Forestry Commission. The group also advises and makes proposals on awareness raising as requested by the PHRG and to proactively raise opportunities.

Could disagreements on UK positions in trade negotiations be escalated through either of these frameworks?

Both Frameworks allow the Welsh Government to influence and input to the UK wide position on trade. This includes the opportunity to escalate these discussions to the overarching EFRA portfolio governance structures including IMG-EFRA for Ministerial consideration.

For Plant Varieties and Seeds, seed and plant material is traded via OECD seed schemes where these apply and participants are bound by the rules of these schemes.

The plant health framework refers to an operating model on engagement between the UK and Devolved Governments on the WTO SPS Agreement, and Department for International Trade guidance on devolved engagement with WTO Committees. Can you provide us with details of these arrangements?

There is positive official level engagement and the arrangements include regular meetings and commitments to share information between UK Government and Devolved Governments in relation to WTO committees.

Are you content that this model and guidance offers adequate engagement with the WTO SPS Agreement and WTO Committees?

The UK is the member state at the WTO and as such, the Welsh government does not engage directly with the any WTO committees. The arrangements set out do offer adequate engagement on WTO and SPS matters.

Governance and Dispute Resolution

Do you consider the dispute resolution mechanisms in the frameworks robust enough for their intended purpose?

The dispute resolution mechanisms are considered to be robust and proportionate. These have been jointly developed and agreed by the four nations. The dispute resolution mechanism allows for disagreements to be escalated as disputes to Ministers, where appropriate and necessary, for timely resolution.

The plant health framework states that the dispute resolution process should only be used when genuine agreement cannot be reached, such as when divergence would impact negatively on the ability to meet the JMC (EN) principles. However, it also says disputes may be raised if a policy proposal conflicts with the policy of any party. What are the risks and benefits of setting strict criteria for escalation of disputes, and do you consider that the framework strikes the right balance?

The Parties to the Plant Health Framework are all bound by the same international obligations and have shared objectives. For these reasons, we expect disputes to be rare. However, if required, the dispute resolution process outlines when it may be used with the intention that disputes are settled at the earliest stage possible.

The framework does not set time limits for dispute resolution. Is there a risk that this could lead to delays to Welsh legislation or policy?

The dispute resolution mechanisms are considered robust and proportionate. These have been jointly developed and agreed by the four Governments. The mechanism allows for escalation to Ministers, where appropriate and necessary, for timely resolution.

What role will there be for external input into dispute resolution?

It will be considered on a case-by-case basis.

Development

How did the Welsh Government engage with stakeholders on the development of the frameworks?

For each Framework, stakeholders from industry groups/bodies were engaged during the drafting process and provided with an infographic with information on the Framework. These stakeholders were engaged again following the publication earlier this year.

How do the frameworks reflect the responses of stakeholders in Wales?

For Plant Varieties and Seeds, stakeholders requested the ability to contribute to the development of the four protocols as they have the potential largest impact on their activities. For Plant Health, the main feedback was for further clarity on how the stakeholder groups interacted with the wider UK Plant Health Service Structure. This has been reflected in the governance structure diagram included in both the Concordat and Framework Outline Agreement.

Review and amendment

How will the Senedd and stakeholders be able to contribute to the review and amendment process for the frameworks?

Discussions are currently underway to agree the process for the monitoring and governance of Common Frameworks following their finalisation. This includes development of a standard template for reporting to be used across all Frameworks. This will be part of the recently published Intergovernmental Relations Review and involve the new Inter-ministerial Standing Committee (IMSC) with Ministers from the four nations.

Stakeholders will continue to be consulted on developments in policy in the usual way. The Welsh Government commits to notifying stakeholders of the upcoming review points of Common Frameworks and of any recommendations by the Senedd.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

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